Mino-Bimaadiziwin: First Nations Self-Determination over Lands and Resources and UNDRIP implementation

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Prepared for Justice Canada on behalf of
the Temiskaming Native Women's Support Group

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Acronym List

AWS	Annual Work Schedules
CEAA	Canadian Environmental Assessment Act
FAFNLMA	Framework Agreement on First Nation Land Management Act
FMP	Forest Management Plans
FNLMA	First Nations Land Management Act
FPIC	Free, Prior, and Informed Consent
IAA	Impact Assessment Act of 2019
IAAC	Impact Assessment Agency of Canada
IBA	Impact Benefit Agreement
ICE	Indigenous Clean Energy
INAC	Indigenous and Northern Affairs Canada
IPCA	Indigenous Protected Conservation Areas
MDMER	Metals and Diamond Mining Effluent Regulations
MMIWG	Missing and Murdered Indigenous Women and Girls
MOU	Memorandum of Understanding
NWAC	Native Women’s Association of Canada
RCAP	Royal Commission on Aboriginal Peoples
TEK	Traditional Ecological Knowledge
TRC	Truth and Reconciliation Commission

Executive Summary

"Without land, Indigenous peoples have no livelihood, no identity, no means of survival."
-Anonymous

First Nations peoples in Northern Ontario are experiencing rapid changes in both their environmental and socio-economic conditions as extractive industries and urban development are encroaching onto the traditional territories of communities. Our elders discuss their childhoods where they were able to drink directly from lakes and streams, enjoying good harvests of medicines and quality hunting. In three generations, drinking from our water sources in Northeastern Ontario has become unsafe. People are catching smaller and fewer fish. Precise cutting of swaths of the forest has destroyed and displaced sacred sites for gathering and driven away moose from the region, a primary food source for many Indigenous families in Northeastern Ontario. For decades there have been calls for increased equity and involvement in economic development on our traditional territories and the incorporation of Indigenous knowledge and worldviews into land-use planning by governments and industry proponents.

A significant area of focus woven throughout this report centers on recommendations that would broaden and strengthen consultation parameters for First Nations and build capacity for communities to generate much-needed land use policies, engagement protocols, work plans and other governance materials that would position First Nations as active partners instead of passive participants in land use practices and projects that encroach on traditional territories. When exploring land issues, a significant range of topics must be addressed at both a federal and provincial level to truly implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The implementation timeline of the national action strategy should be extended to allow for further research and review of the complex and interrelated issues that Indigenous peoples face. Careful consideration of the full scope of implementing UNDRIP into the fabric of Canada has the potential to advance First Nations' ability to achieve self-determination. It could also help overcome historical and contemporary policies that have oppressed First Nations peoples and created a cycle of dependency and limited capacity in First Nations communities in Canada.

The following list contains the key recommendations emerging from our engagements with First Nations peoples and our corresponding research:

1. Provide redress for Indian Act electoral processes and provide support communities to develop community-focused leadership selection processes.

2. Increase Indigenous representation in decision-making platforms to increase the effectiveness of “free prior and informed consent.”

3. Create lands and resource positions in the government for Indigenous peoples to build trust and understanding between communities and governments.

4. The Government of Canada must clarify how “free prior and informed consent” will go beyond “the duty to consult.”

5. Mandate that development consultations should be clear and accessible to various audiences.

6. Create indigenous-specific funding streams that allow First Nations to conduct programming targeting marginalized groups within the membership to practice intergenerational knowledge transference.

7. Create core funding for environmentally sustainable initiatives and services.

8. Automatically allocate core grant funding for First Nations bands to hire and train lands and resource staff to allow for the more significant assumption of control over reserve and ancestral lands. This funding should also allow for the purchase of equipment to deliver environmental monitoring to increase participation in economic development.

9. Create long-term allocated funding to ensure smaller nations adequately participate in consultation processes. The government should also support community selection of technical expertise and targeted funding.

10. Increase funding for land and resource coordinators removing the reliance on industry influence and private contributions such as revenue-sharing agreements.

11. Increase federal funding to education budget allocations for First Nation Reserves.

12. The government should provide for the implementation of wrap-around supports and increase the breadth of support funding access (ex., child-care, wage supplements, removing limitations to education years, second-chance funds for mature students, investment into non-status people and children of s. 6.2 *Indian Act* status Indians)

13. Increase information accessibility through expanding telecommunication infrastructure and implementing technology access programs in remote communities.

14. Increase taxation revenue sharing from extractive industries such as mining between provinces and Indigenous peoples affected by resource extraction to fund additional services for First Nations communities.

15. Establish best practices for First Nations consultations standards through analysis of previous consultation relationships between First Nations and various stakeholders to determine minimum standards of conduct and workload to be conducive to meaningful consultations. Compile and characterize individual Provincial, Territorial and Indigenous relationships in First Nations consultations and land use planning. Establish metrics measuring intersectional components such as inclusivity, diversity, and qualitative and quantitative data points of people engaged. Analyze to highlight disparities and utilize this information to generate standardized minimum required practices across jurisdictional practices, not only at the Federal level. These metrics shall be co-determined and co-created in partnership with First Nations communities.

16. The federal government needs to work with or provide the capability to First Nations to work with the Province of Ontario to revise the *Mining Act* to address consultation requirements at claim staking and prospecting/ early exploration on First Nations' traditional territories. The federal government also needs to help address the regulatory weaknesses in Ontario legislation favouring developers' interests over First Nations peoples.

17. Strengthening regulations to rigorously address and mitigate mining and extractive industry development in all planning phases to post-closure of a mine.

18. **I**mplement support for First Nations communities to assist in co-planning and co-generating Forest Management Plans in conjunction with other stakeholders to ensure representation of Indigenous interests from the planning outset.

19. Implementing forestry management education programs to achieve better understanding and relations between First Nations communities, forestry industry proponents, and governmental representatives.

20. Enshrine the right to water as a fundamental legislated right federally and in provinces and territories across the country.

21. Uphold the values of Indigenous women. This requires a distinctions-based approach to understanding women's roles as Water Keepers in water conservation efforts, and they must be included in conservation planning.

22. Enact rigorous and restrictive effluent disposal standards that protect watersheds, lakes and rivers that vastly improve existing legislation such as the Metal and Diamond Mining Effluent Regulations and the *Fisheries Act*.
23. Conduct a comprehensive review and investigate effluent disposal into water bodies to determine the extent of how Canadian waters are polluted.

24. Investigate more stringent and aggressive mine waste regulations at both the federal and provincial levels.

25. Reinstate regulatory protections over the lakes and rivers impacted by the *Canadian Navigable Waters Act*, remediate harms against previously deregulated waterways, and violate First Nations peoples' rights to sustenance practices and clean drinking water.

26. Ensure Indigenous people are included equally in land-use planning and impact assessment processes, including the decision-making stage.

27. Consider Indigenous knowledge and traditional ecological knowledge led by communities as equal to Western scientific knowledge without creating a hierarchy of validity.

28. Mandate proponents to thoroughly research and understand contemporary Indigenous issues and priorities. Communities must be involved in evaluating and determining project success and compliance indicators.

29. Mandate employment equity plans in resource development corporations' policy implementation and demand concrete and transparent mechanisms of consultation delivery to ensure equal representation of diverse subgroups.

30. Require data collection and analysis that articulates accommodation measures undertaken by project proponents, contributing the baseline data of practices that may be applied to various projects.

31. Governments must ensure appropriate timeframes are implemented to respectfully obtain and convey collective knowledge from community members, including relational knowledge and contextual background information in legislation that requires consultation with Indigenous communities. This includes lengthening timelines, implementing vigorous notice schedules, and communicating with First Nations communities.

32. Mandate equitable inclusion in land planning strategies on ancestral lands. For example, having Elders and knowledge holders identified by the community be a part of resolution boards to discuss the planning and development of resource extraction projects.

33. Investigate land use planning mechanisms that can incorporate less tangible elements of traditional knowledge, such as spiritual and cultural significance, traditional principles, and values. Implement a policy framework of TEK implementation mandatory for implementation standards in all major industries, including mining, forestry, and agriculture.

34. The federal government must provide redress for the historical and ongoing dispossession of traditional lands, territories, and resources.

35. The federal government must empower communities to have stewardship and control over their traditional lands, territories, and resources not limited to reserve lands.

36. Review provisions of the *Indian Act* that arbitrarily discriminate against non-status Indigenous community members concerning housing and land rights.

37. Promote the establishment of Indigenous Protected and Conserved Areas in Northern Ontario.

38. Mandate community land use plans to be in place on potential areas of development on alleged crown lands.

39. Through financial and other means, promote and support Indigenous-led businesses related to green technical careers and skilled trade development.

Background

In 1996, the final Report on the Royal Commission on Aboriginal Peoples (the "RCAP Report") stated:

> Land is absolutely fundamental to Aboriginal identity... Aboriginal concepts of territory, property and tenure, resource management and ecological knowledge, may differ profoundly from those of other Canadians, but they are no less entitled to respect. Unfortunately, those concepts have not been honoured in the past, and Aboriginal peoples have had great difficulty maintaining their lands and livelihoods in the face of massive encroachment.
>
> This encroachment is not ancient history. In addition to the devastating impact of settlement and development on traditional land-use areas, the actual reserve or community land base of Aboriginal people has shrunk by almost two-thirds since Confederation, and on-reserve resources have largely vanished. The history of these losses includes the abject failure of the Indian affairs department's stewardship of reserves and other Aboriginal assets. As a result, Aboriginal people have been impoverished, deprived of the tools necessary for self-sufficiency and self-reliance (Royal Commission on Aboriginal Peoples, 1996).

In the 25 years since this statement was published, there has not been significant improvements to the difficulty faced by Indigenous peoples to maintain their lands and livelihoods in the face of massive encroachment. It could be argued that encroachment has gotten worse. In the face of continuing development supported by governmental approvals, the ability to meaningfully use traditional land and to conduct traditional practices could face a "death by a thousand cuts".[1]

While there are many outdated recommendations in the RCAP Report, the excerpt above still rings true. There has been some progress in Indigenous rights and title since the publishing of the RCAP Report. However, contemporary land-use regimes, policies, and laws still do not provide much decision-making authority to Indigenous communities regarding their reserve and traditional lands.

Implementing UNDRIP is an opportunity to begin rectifying outstanding and longoverdue issues concerning traditional lands and resources. For example, article 26 of UNDRIP states:

> 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 26(3), in conjunction with article 26(1), imposes an obligation on Canada to give legal recognition and protection to lands, territories, and resources “traditionally owned, occupied or otherwise used or acquired” by Indigenous peoples. Article 26(2) highlights the right of Indigenous peoples to “own, use, develop and control the lands, territories and resources that they possess”. These are the same lands, territories, and resources that Canada has an obligation to legally recognize and protect. If Canada were to seriously implement article 26, Indigenous communities would be able to exercise control over their lands and resources, and to derive the benefits from that ability to exercise control. If this does not occur, the spirit and intent of UNDRIP is thwarted.

To honor the spirit and intent of UNDRIP, policies and processes must be developed that go beyond acknowledging the rights of Indigenous peoples, but include them as true partners.
The inclusion of Indigenous people in environmental planning and economic development opportunities causes strains on Indigenous communities. For example, resource development corporations are increasingly expected to include a broad range of socio-economic impacts, as well as environmental impacts, in the planning of new projects. Indigenous communities are experiencing increased burdens on the capacity of their staff to meet consultation demands. Many communities are in the process of creating land use plans, consultation protocols, and forming relationships with other nations or developers, which requires time and resources from these communities.

The Government of Canada has made commitments regarding land use occupancy, governance, and capacity building for decades. The Government of Canada published a report titled “Gathering Strength - Canada’s Aboriginal Action Plan” in which they committed to building governance capacity on first nations, explicitly making reference to the professional development in lands, environmental and resource management in partnership with First Nations communities (Government of Canada, 1998). UNDRIP implementation presents a key opportunity to advance the commitments listed in this report, which included:

- Law-making: a primary vehicle for legislative and executive capacity building to equip First Nations with trained personnel;
- Lands and environmental stewardship: initiatives will be supported to provide accredited professional development programs;
- Lands and resource management: initiatives will support accelerated transfer to First Nations of land management, land registry and survey functions; and
- Community Support: specific capacity building initiatives will be directed at promoting the informed consent of constituents in Aboriginal communities in order to help harmonize progress in governance with how community members understand the changes taking place (Government of Canada, 1998).

This report along with the RCAP Report underscores that these nation-to-nation dialogues related to land-use have existed since the 1990s.

Permanent sovereignty over natural resources as a right of the people has been an emerging concept as 'non-state' entities (such as Indigenous peoples) have been slowly making contributions. Over time this has eroded the traditional concept of sovereignty as a state-specific power (Pereira, R. 2014). Dialogue over the impacts of land usage and the resulting environmental degradation have been increasing for decades. Arguments about resource development projects encroaching and impacting traditional territory are plentiful. Over time, the inability for Indigenous peoples to participate in land-use planning and development has shifted from outright exclusion, to marginalized participation. The concept of what constitutes Indigenous rights, environmental rights, and other ways of knowing and doing are increasingly called upon in discussions about land management practices. The need for meaningful inclusion in land planning and economic development is a matter of health and safety for Indigenous communities since Indigenous cultures and livelihoods are inextricably linked to the natural world and the land upon which they occupy. The action plan contemplated at s. 6 of the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDRIP Act) has the potential to lead to tangible contributions to reconciliation efforts in the Canadian context. The UNDRIP Act is an opportunity to put words into action and bring innovative solutions to complex issues to overcome structural violence and state-centric control over the futures of Indigenous peoples.

Canadian history has innumerable instances of actively excluding Indigenous peoples from settler society, disregarding their rights, instituting overtly racist and assimilationist legislation such as the *Indian Act*, and criminalizing Indigenous culture and traditions (RCAP 1991). The intent was to forcefully assimilate Indigenous peoples into western society, and the effects of this dispossession of lands and cultural practices of Indigenous peoples are clear in today's generation. The impacts of this genocide have left Indigenous people to revitalize nationhood, cultural practices, and languages that are presently in danger of being lost. Through our consultations, the key message we heard was that the health and resilience of traditional

lands are directly linked to Indigenous people's identity and survival. UNDRIP is one tool that can be used to preserve the health of traditional lands and by extension, the health and well-being of Indigenous people whose land is being apprehended, eroded, and exploited for profit.

Since UNDRIP is meant to encompass all Indigenous peoples throughout the world, UNDRIP articulates *minimum* standards and rights of Indigenous peoples that can be applied to many different countries and states. This universality may also be UNDRIP's greatest weakness. The implementation of UNDRIP has the potential to have positive impacts, but it also has the potential to maintain the status quo. The harmonization of UNDRIP with Canadian law could serve multiple purposes: to regain international legitimacy in Indigenous human rights protections, recognize Indigenous self-determination, allow for more equitable distributions of wealth, and promote sustainable development through the expression of Indigenous values and worldviews within extractive and development projects (Mitchell, T. 2014). It also carries the risk of adding nothing meaningful to contemporary rights, lands, and treaty fulfillment. This is partially because of the limitation of the application of the UNDRIP Act to the federal government, as will be seen in the next section.

UNDRIP's Federal Limitations

One important aspect and limitation of the UNDRIP Act that should be acknowledged is that it is federal legislation, and it only imposes obligations on the federal government.[2] This is partly because of the division of powers set out in the *Constitution Act, 1867*. Under s. 91(24) of the *Constitution Act, 1867*, exclusive legislative authority over "Indians, and Lands reserved for the Indians" is assigned to the federal government. Provinces, on the other hand, have the power to regulate land use within the province.[3] The foundation of this power lies in s. 92(13) of the *Constitution Act, 1867*.[4] The power of provinces to regulate land use applies to all lands, whether held by the crown, by private owners, or by holders of aboriginal title[5] (the power to regulate aboriginal title is subject to certain exceptions[6]). Aboriginal rights in relation to land are generally under federal jurisdiction[7], and provinces can be prevented from legislating in relation to aboriginal lands and rights.[8]

To summarize, the federal government can exercise legislative authority for First Nations people and their lands, but the general regulation of lands within a province is under provincial authority. An issue is it is presently unclear how any of the provisions of UNDRIP related to lands can be adequately addressed when provinces have the general authority over lands in their provinces. There is no certainty any of the provisions of UNDRIP related to lands beyond reserve lands and aboriginal title lands can be influenced by the federal UNDRIP Act. For example, Article 26 (1)-(2) both mention "traditional" ownership, use, acquisition, and possession of lands. It is unclear how these traditional lands will be captured by the federal

UNDRIP Act if they fall outside of the legislative authority and jurisdiction of the federal government.

Another example of the federal UNDRIP Act intruding into the provincial sphere is when it comes to resources. Section 92A(1)(b) of the *Constitution Act, 1867* grants provinces the power to exclusively make laws in relation to the "development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom." Article 26(1) of UNDRIP states that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." Article 26(2) provides that "[s]tates shall give legal recognition and protection to these lands, territories, and resources." It is presently unclear how the UNDRIP Act can protect resources that have been "traditionally owned, occupied or otherwise used or acquired" if the province has exclusive legislative authority over non-renewable natural and forestry resources.[9] Many traditionally owned resources will likely be in provincial or even private lands. Further, it is also unclear what resources are being referred to in UNDRIP (i.e., if they are renewable or nonrenewable, minerals, water, forestry-related, etc.). Clarity is required when discussing the federal government's obligation to give legal recognition to traditionally owned, used, and acquired resources that fall outside of reserve lands.

There is a real chance that the federal government may be unable to fully implement UNDRIP when dealing with lands, territories, and resources. There are likely more areas where the provinces have exclusive legislative authority over the subject matter contained in UNDRIP, which they may not be able to implement without some coordination with provincial governments. Until the federal government is clear on how exactly the provisions of UNDRIP that are exclusively provincial will be implemented, many UNDRIP provisions may go unrealized.

Methodology

The following sections are based on the most frequently recurring themes we heard during our grassroots engagements. The records of discussion and engagement were used to guide the direction of this report, and we have directly connected each key recommendation to the calls from the Indigenous peoples who participated. It was quickly apparent that many people were unaware of UNDRIP and the plan to implement it in Canada. To properly inform the participants of the implications of UNDRIP, we adopted the practice of both community education and guided discussion. We used a variety of engagement methods, including one-on-one interviews, focus groups, and open house-style presentations. We also selected target demographics such as youth, elders, and gender-specific groups to ensure adequate

demographic representation of our region. Through these spaces, we facilitated an environment where people could speak freely about their experiences living on and off reserves and their barriers to participating in land-use and management processes.

For our research, we focused on UNDRIP Articles 11(2), 27, 32(3), 18, 19, 23, 26(3) 29, 31, 32(2), 38, 39 and their contextual implications. Our analysis draws parallels to the Truth and Reconciliation (TRC) Calls to Action as well as the Missing and Murdered Indigenous Women and Girls (MMIWG) Calls to Justice. We articulate strategies in tandem with some of the actions presented in “Gathering Strength: Canada’s Aboriginal Action Plan”, most notably “Key Action II: Strengthening Aboriginal Governance” and the subheading “Professional Development in Land, Environment and Resource Management”.

We adopted a four-phase method of data collection that led to the final recommendations emerging in this report. The focus of each phase was to build relationships, establish trust to have open discussions surrounding UNDRIP and gauge community well-being. We then conducted a literature review, which looked at existing academic, legal, gray literature, and grassroots publications to expand on the feedback we received on key topics surrounding UNDRIP. We synthesized information from 231 participants and conducted a systematic review of a variety of literature surrounding UNDRIP and several other Indigenous-oriented policies which have emerged in recent history. Our positionality is shaped by the feedback we received during our engagements and supported by existing research.

From May 2022 to March 2023, our engagement sessions were held both in person and virtually. We sought counsel from our Wisdom Keepers council, which consists of a group of seven elders from various nations across Northern Ontario, to guide the scoping of our work. We also created a committee of Indigenous community leaders who have land-use planning experience to discuss our key findings and get direction on research pathways. We also sought legal counsel to assist with various aspects of drafting. Through these efforts, we are able to recommend actionable pathways while staying true to what we heard and therefore honouring the distinct lived realities of First Nations peoples in Northern Ontario are currently facing.

We were cognizant of the intersectional needs of attendees to our workshops, and we created grounding questions to open dialogue for discussion in formal meetings to allow people to explore values and aspirations for now and in the future. The questions are as follows:

1. Do you feel your traditional lands are healthy?
2. What does equal representation look like to you?
3. What would fulfill your needs to better understand land management issues?
4. What are the barriers you’ve experienced to participating in land management issues?

5. Are you and your family gainfully employed? Do they reside in the area? Why or why not?
6. How has traditional knowledge of your lands been passed down in your family?

The focus of our consultations and research was centred on lands and resources. We determined key interview questions that would be accessible to a range of people with various lived experiences and used a thematic analysis approach to collect qualitative feedback from Indigenous people across northern Ontario. All of our engagements during the project included four key questions to guide our research and further our recommendations:

1. What are your community priorities for traditional lands now and in the future?
2. What accountability structures could be put into place that would secure and protect equitable inclusion and participation in land management/development strategies?
3. What could further inform and support community understanding and opportunities for engagement in land use issues?
4. How can we achieve a thriving connection to the land? How can this be upheld?

We used the principles of both quantitative and qualitative methodology to guide our thematic analysis. The analysis began with breaking down each engagement into frequently mentioned themes and topics. Each theme/topic of focus was broken down into categories that were later used to structure our recommendations. The core values which were consistently presented are:

- The declining natural features in Northern Ontario;
- The lasting effects of development;
- Concerns about nature's ability to restore itself from industry projects;
- The ability to sustain wild game and medicine in the area; and
- Maintaining gainful employment.

Finally, the key recommendations emerging from our engagements were presented to our Elders Council, our committee, and participants involved in previous phases. We relayed the findings from the literature review, interviews, and thematic analysis and created an opportunity to provide feedback. This gave us the opportunity to re-engage with participants, obtain approval for any of their contributions, and be assured that we had represented their ideas well. It additionally provided time for new feedback to be given.

Findings

First Nations Leadership and Decision-Making

Article 8(2)(d) of UNDRIP obligates the government to provide effective mechanisms for the prevention of, and redress for, "[a]ny form of forced assimilation or integration". Furthermore, Article 33 of UNDRIP highlights the right of Indigenous peoples to determine their own identity and membership in accordance with their own customs and traditions, including membership in institutions.

A starting point in discussing the election of chief and band councils is the *Indian Act* (Government of Canada, 1985). The election provisions for *Indian Act* bands are sections 74-80 of the *Indian Act*.[10] Bands can choose to use custom election methods if they are under the *Indian Act* election provisions[11], but many bands still use *Indian Act* election provisions. As of July 1, 2015, there were 63 bands with custom elections and 63 bands following the election provisions in the *Indian Act* in Ontario (Government of Canada, 2015a). A First Nation may also conduct elections in accordance with the *First Nations Elections Act*, or under their constitution if they are party to a self-government agreement (Government of Canada, 2022b), but these methods will not be covered in this report.

Indian Act elections are historically founded on racist, assimilationist principles. As early as 1869, Parliament enacted laws that allowed the government to suppress traditional governance systems and replace them with elected councils.[12] This was accomplished by adding a First Nations to a regulation that contains the names of all First Nations which must conduct elections according to the *Indian Act*.[13] In an Indian and Northern Affairs Canada report by the Treaties and Historical Research Centre in 1984, it was stated that in the 1880s:

> The persistent emphasis on the system for electing band councils was believed necessary to destroy the indigenous tribal political system, which often proved remarkably resilient. The work of missionaries, the operation of the reserve system, and other provisions of the Indian Act were thought to be well on the road to undermining the rest of Native culture, and it was left to the elective system to acculturate Indians to the Canadian political system (Johnson, 1984).

The 1880 version of the *Indian Ac*t attacked traditional governance structures, forced traditional leadership out of their respective positions, and imposed *Indian Act* elections (Royal Commission on Aboriginal Peoples, 1996). This desire to eliminate traditional forms of leadership also manifested itself in the criminalization of leadership and practices related to leadership. For example, potlatches, which were seen as affirming leadership in some west coast communities, were banned and criminalized in 1880 (Senate of Canada, 2010) In the

1920s, the Canadian government raided a council hall, jailed the traditional leaders of the Haudenosaunee, seized all official records and symbols of government, and installed an *Indian Act* council (Moss & Gardner-O'Toole, 1991).

Custom elections are seen as a way for First Nations to install leadership in ways that are different from the *Indian Act*. While s. 2 of the *Indian Act* contemplates custom leadership selection[14], this right is not given by the *Indian Act*. Rather, this section reflects how an Indian Band has customs, which may include a custom for selecting leadership.[15] In other words, leadership and governance are not derived from the *Indian Act*, but from a First Nation's Aboriginal right to make its own laws concerning governance.[16]

Custom elections should not be taken to mean "traditional" Indigenous governance structures since they may not be the same.[17] A band that has previously been under the *Indian Act* election provisions have been able to "revert to custom" by having their name removed from the list of First Nations that must hold elections under the *Indian Act*.[18] A band that is under the *Indian Act* election system typically needs to ask the Minister of Indigenous Services Canada to issue an order that removes a First Nation from the application of the *Indian Act (*Government of Canada, 2022b). The Government of Canada has developed the "Conversion to Community Election System Policy" ("Community Election Policy"), which lists criteria used to determine if a First Nation's proposed custom election system can meet the standards imposed in the Community Election Policy. If the custom election system meets these standards, a First Nation can revert to a custom election system away from the *Indian Act* election provisions (Government of Canada, 2022a). Once a First Nation is removed from the election provisions in the *Indian Act* through a repeal of an order issued pursuant to s. 74 of the *Indian Act*, the government is no longer involved in those elections, and will not interpret, decide on the validity of the process, or resolve election appeals (Government of Canada, 2022b).

Custom elections do not solve all problems related to *Indian Act* elections. An issue is that, because of the requirements of the Community Election Policy, custom elections resemble the *Indian Act* electoral framework (Senate of Canada, 2010). In a 2010 report of the Senate Committee on Aboriginal Peoples titled "First Nations Elections: The Choice is Inherently Theirs", the committee heard evidence that there has not been a single instance in which the Government of Canada approved a reversion to a custom that is based on a non-electoral model (Senate of Canada, 2010). Other issues found in this report related to custom election codes were:

- The Community Election Policy was too inflexible and restrictive;
- The process to revert to custom leadership selection is "onerous;"
- There is a lack of resources to draft and implement codes; and

- Custom elections are not funded by the government, but *Indian Act* elections are (Senate of Canada, 2010)

The elective leadership measures carried out throughout the years by the many iterations of the *Indian Act* were acts of overt assimilation and integration. This continues to this day with the I*ndian Act* election procedures and the federal government's imposition of criteria of custom elections for bands under the *Indian Ac*t election provisions.[19] It could be argued that the Community Election Policy is continuing the legacy of the *Indian Act* by prescribing the boundaries of an electoral leadership system when bands revert to the custom leadership selection.

The way this affects First Nations people is that governments choose to work with leadership when making decisions that affect First Nations lands and territories. During our engagements, we heard that community members were frustrated with the lack of transparency from leadership during decision-making processes relating to lands and resources. When they did attend certain community meetings, they felt that their values were disregarded or not properly documented. This has caused mistrust between community members and the elected leadership. Another key topic was the ongoing housing crisis for First Nations communities. Despite the multiple empty houses, one community member spoke of leadership selectively choosing individuals based on the band's best interest despite the members who were in desperate need of housing. This fueled the frustration among community members who felt that their elected leadership is neglecting their values and priorities.

By prescribing attributes for custom elections, the Government of Canada is limiting the right of First Nations people to determine the membership of their institutions contrary to the right prescribed in Article 33 of UNDRIP. Further, the government is obligated to provide redress for the ongoing assimilatory practice of forcing electoral governance on First Nation people's leadership selection processes.

1. **Recommendation:** Provide redress for *Indian Act* electoral processes and provide support to communities to develop community-focused leadership selection processes.

Free, Prior, and Informed Consent

"We must create processes to ensure that what we are saying about our own lands is upheld." -Anonymous

The discourse in Canada surrounding “Free, prior, and informed consent” (FPIC) has produced confusion over what it actually means. Over six years have been spent hyper-focusing on the term “veto”[20] as it relates to FPIC in Canada. The problem that was never clearly solved was what FPIC would actually mean to Indigenous peoples and their communities in Canada. On a surface level, FPIC appears to empower communities to push back against States and stop certain activities in the specific circumstances enumerated in UNDRIP. However, it seems this was never the intention. James Anaya, a former United Nations Special Rapporteur on the rights of Indigenous Peoples, stated in 2009 that the “consent” portion of FPIC really only means that “establishing consent” is the “objective of consultations with indigenous peoples.”[21] In other words, the goal is not to achieve consent, but rather *to consult with the objective* to achieve consent.

In 2018, the United Nations General Assembly reiterated the reasoning of James Anaya above, where consultation in UNDRIP emphasizes “the nature of negotiations towards mutually acceptable arrangements prior to decisions on proposed measures”.[22] The term “mutually acceptable”, again, emphasizes that Indigenous nations do not have the power to unilaterally stop a project or a proposal. The report goes on to state that an Indigenous group may withhold consent regarding a proposal, and “[w]ithholding consent is expected to convince the other party not to take the risk of proceeding with the proposal”.[23] In this interpretation of FPIC, there is an expectation that States may choose to go ahead with proposals regardless of any input from Indigenous peoples.

In the same report, it is stated that “a number of countries and stakeholders have endorsed a policy not to proceed if Indigenous peoples withhold their consent.”[24] The need for a secondary policy position in this context highlights the ineffectiveness of FPIC for allowing Indigenous peoples to have any sort of control through FPIC. This interpretation of FPIC appears to only enforce the status quo, more so than it is adding anything transformative to the “duty to consult” framework that is already in force in Canada.[25]

An important consideration of FPIC is the communicability of its concepts. Many people likely see the term and interpret it to mean that they have *control* over projects or proposals. It is unlikely that a person without legal training (or requisite knowledge of FPIC) would interpret FPIC to mean that the objective of consultation is to ultimately “establish consent”[26] and nonetheless, continue with the project regardless of Indigenous opposition. The problem that arises with this is that there may be many people arguing for the implementation of FPIC, but not fully understanding what FPIC means at an international level.

The discourse over “veto” powers in Canada did help clarify, in some regards, that FPIC does not allow for the outright refusal to approve projects by Indigenous nations in Canada.

However, it is unclear if the general population truly understands the nuance of the discussion or even knew these discussions existed. It would be improper to believe that the general population was following close enough to governmental and political discussions on FPIC to be able to fully grasp what FPIC means. For example, a significant need to bring awareness about UNDRIP emerged immediately when conducting our engagement activities for this report. Many people were not aware of UNDRIP and its implications, unless they either had specific education, or worked in industries that covered policy in lands and resources. The clear disconnect between political entities and Indigenous communities on these matters has significant potential to intensify barriers and miscommunications. There is a real chance that many still believe that FPIC gives *complete control* to Indigenous peoples, when the intention of FPIC was always to let States have the final approval over any proposal or project.

Another major issue with FPIC is the general lack of clarity about what it means, and how it would improve the current situation for Indigenous peoples in Canada. The Government of Canada has stated that FPIC "builds on and goes beyond the legal duty to consult" (Government of Canada, 2023a)[27], but it is unclear how FPIC does so. What can be speculated is that FPIC likely stands between the duty to consult (which is already the minimum in Canada) and the ability to have absolute control over traditional lands, territories, and resources. What this looks like in practice is unknown, and it is even less clear how the federal government intends to require FPIC for non-reserve lands (i.e. some traditional territories) when the UNDRIP Act only applies federally, and jurisdiction over land use planning mainly falls to the provinces.

> "Many First Nations communities are feeling burnt out and don't have the capacity to take on UNDRIP." -Anonymous

There are also capacity issues that make it difficult for communities to have "free" and "prior" knowledge. Many Indigenous communities need help to meet the demands of engaging in land management. The major barriers include lack of funding, burnout, and difficulty understanding information. Information needs to be more inclusive and approachable for people to understand.

Even before FPIC is engaged, many community members do not feel connected to many consultation processes. Consultation processes do not allow for values to be upheld; many people felt that their concerns go unaddressed. There is a disconnect between Indigenous values and western interpretation of values. Indigenous people do not view land as something to own. The responsibility to protect the land guides their principles and understanding of the environment. This cannot be quantified and understood during a consultation. This causes many community members to feel devalued and discouraged from

participating. Something that most, if not all, nations are struggling with is a need for more participation. We heard multiple times about the need for meaningful engagement and a better way to increase understanding of the information provided during consultations.

2. **Recommendation:** Increase indigenous representation in decision-making platforms to increase the effectiveness of “free prior and informed consent.”

3. **Recommendation:** Create lands and resource positions in the government for Indigenous peoples to build trust and understanding between communities and governments.

4. **Recommendation:** The Government of Canada needs to clarify how “free, prior and informed consent” will go beyond the “duty to consult.”

5. **Recommendation:** Mandate that development consultations should be clear and accessible to various audiences.

(S.6, 32,29,18, Participation in decision-making and Indigenous Institutions)

Capacity Building to Increase Self-Determination over Lands and Resources

> “The land relates to our health and a clear understanding of our values and our connection to our ancestors.” -Anonymous

The need for capacity building in nationhood and cultural resurgence is paramount for equitable inclusion and self-determination for First Nations in Canada. Self-determination is central to community revitalization and building more inclusive systems. It can only be achieved if the community has the capacity, which includes having the time, resources, funding, and support systems in place. While communities begin to decolonize their knowledge systems and governance structures, they begin to build the capacity to be self-determined. They can then create space for cultural practices to thrive and multiple knowledge systems to be brought forward as equals.

Decolonization is integral to the process of self-determination, and this requires the colonial state not to act as a mediator (Minno Bloom & Carnine, 2016). Not all First Nations communities have been able to move away from government dependency and be able to articulate their long-term priorities and generate their own policies, protocols and economic development strategies. Each First Nation in Canada is at varying levels of capacity. Some communities have highly developed lands and resources departments. and strong programs and services for their membership. Other smaller nations have limited staff and resources, and are overburdened with the amount of work needed for proactive priorities. Some nations remain

locked in a constant state of reaction to ongoing developments and encroachment on their traditional territories.

> “Rebuilding our Nationhood is a fundamental and ongoing process to obtain self-determination and self-governance. With collective interests, priorities and shared values, we become strong contenders in the fast-paced world of economic development and legislative processes that influence our lands and resources.” -Anonymous

“Self-determined and Indigenous-led solutions and services” is one of the key principles outlined in the MMIWG National Action Plan (NWAC, 2021). The right to self-determination is an internationally recognized and affirmed right of every human being. During the atrocities of World War II, the UN was formed and began their work by making a declaration about basic human rights. Canada has since become a signatory of this declaration. Article 1 of the UN International Covenant on Civil and Political Rights states:

1. All peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural developments.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of their own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations (UNHR, 1966).

The assertion of this basic human rights covenant in Canada can be authentically achieved only when the means of achieving self-determination are restored to *all* identity groups in Canada. Article 3 of UNDRIP echoes this same sentiment where it states “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development”. As exemplified above, Canada has long been a supporter of self-determination. The UN General Assembly has clearly identified colonialism as a violation of the human rights of those people subject to the colonial state, leaving self-determination as the only clear path forward (Manuel & Derrickson, R. 2016). For example, the UN International Covenant on Civil and Political Rights states:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the UN, and is an impediment to the promotion of world peace and cooperation.
2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development (UNHR, 1960).

The concept of self-determination is key to understanding how Indigenous peoples wish to be consulted in industrial development and major projects. Capacity-building initiatives that foster Indigenous nation's stewardship over lands and resources are growing in momentum, but there remains no core funding to specifically address lands and resources capacity or strategic implementation of support services for nations that require it. With few supports, First Nations face difficulties establishing key protocols and policies as well as long-term visions and strategies for their communities.

A key takeaway from these declarations is that there cannot be self-determination without mutual agreement on the terms of what constitutes self-determination for each nation. Indigenous people have the right to determine the way in which they live. Approvals for resource development projects impacting Indigenous peoples must consider their rights to live and to use the land, and follow their respective traditional and cultural practices related to that land.

During our project activities, we heard people make comments related to capacity building for their respective communities in a variety of contexts. The overarching takeaway from our engagements was that people are feeling frustrated and helpless. They felt as if there had been years of repetitive engagements where they were calling for the same set of supports, and lands and resource rights. Currently, the youth are calling for the same protections of traditional territories as their grandparents have been making for decades. Until there are concrete mechanisms that allow Indigenous peoples to exercise true authority over lands and resources, the dispossession of lands and their effects on Indigenous communities will continue. The lack of capacity communities are experiencing in facing these challenges has long-term implications for the health and cultural well-being of First Nations peoples.

During engagements, there were many responses relating to the need for capacity building at the community level. Some of the responses called for:

1. Additional support for lands and resource departments;
2. Investment into higher education and training for Indigenous peoples to build up professional skills to have more equitable inclusion and representation;
3. Engaging in meaningful consultation processes that ensure people's words are being respected and adhered to; and

4. More time and better communication strategies between developers and band leadership and membership.

Additional Support for Lands and Resources Departments

Many First Nations need to regularly apply and reapply for funding from the government for different initiatives. Smaller nations that have a low capacity to continuously apply for funding have limited dollars to allocate for staff retention of lands and resources coordinators. The process of applying for operational or project-based dollars for lands and resources positions creates an access barrier for First Nations that are in the process of building their departments.There are other core governance priorities (i.e. education, health, housing, etc.) that are often left to be the responsibility of limited and over-burdened staff. Funding allocations are overwhelmingly insufficient to cover the wide variety of activities related to First Nations lands and resources. While economic development is a priority for many bands, there remain significant gaps in smaller nations' abilities to grow and move away from a state of government dependency without sufficient funding allocations that specifically target environmental stewardship programs, economic development, and general lands and resources management.

Many bands in Northern Ontario are operating with a staff of one or two personnel that are tasked with a staggering amount of work in land use planning, consultations, traditional use and occupancy studies, archeological discovery, zoning, environmental programming, and more. The technical skills necessary to do this work in a variety of fields, typically within limited timelines in the context of consultations, require outsourcing of work to often expensive consulting companies. In addition to bands having to react within limited timelines to many different land-related issues, they are also diverting dollars to outsource work to often non-Indigenous entities. This creates cycles of dependency, and exacerbates the lack of capacity for bands to undertake their own studies and project management opportunities. Bands are further constrained since programming on-reserve to band membership, in particular to youth, are dependent on inconsistent funding and contribution agreements that only focus on a particular government’s priorities at that time. While there are funding streams available, such as Indigenous Service Canada's Reserve Lands and Environmental Management Program, there remains little opportunity from government funding for land-based programming and funds in grant form that would increase membership capacity to engage in lands and resources issues and priorities.

6. **Recommendation:** Create Indigenous specific funding streams that allow First Nations to conduct programming targeting marginalized groups within membership to practice intergenerational knowledge transference

7. **Recommendation:** Create core funding for environmentally sustainable initiatives and services

8. **Recommendation:** Automatically allocate core grant funding for First Nations bands to hire and train lands and resources staff to allow for the greater assumption of control over reserve lands and traditional territories. This funding should also allow for the purchase of equipment for the delivery of environmental monitoring to increase participation in economic development.

9. **Recommendation:** Create long-term allocated funding to ensure smaller nations adequately participate in consultation processes. The government should also provide technical expertise and targeted funding. (S.6,29,32,Participation in decision-making and Indigenous Institutions, Implementation and Redress)

10. **Recommendation:** Increase funding for land and resources coordinators removing reliance on industry influence, and private contributions such as revenue sharing agreements. (S.6,32,27, Lands, Territories & Resources)

    These recommendations will allow the government to uphold UNDRIP Articles 25, 26 (1,2,3), 29 (1,3)

Higher Education and Technical Skills Training

The investment into higher education and training for rural, northern communities to increase attendance rates at post-secondary institutions is integral in providing restitution for past harms. There remain significant gaps in the ability for communities to respond to new information from prospective developers and nearby industries. There are also gaps in abilities to participate in scientific studies conducted on the land, as is the case in resource development planning.

Investment in human capital in northern communities closes education gaps and grows the professional capacity of the Indigenous people living there. In the TRC Calls to Action, call 10 outlines specific parameters to draft new educational legislation that would commit sufficient funding to address issues within the existing federal education funding allocations, outlining two specific principles (TRC, 2015). First, the need to provide sufficient funding to reduce the well-

documented educational achievement gaps within one generation. Second, improving education attainment levels and success rates (TRC, 2015). Statistics Canada provided the following figures in 2011 that highlights the differences of educational attainment between Indigenous and non-Indigenous groups:

> Almost one-half (48.4%) of surveyed Indigenous people had a postsecondary qualification in 2011, including 14.4% with a trades certificate, 20.6% with a college diploma, 3.5% with a university certificate or diploma below the bachelor level and 9.8% with a university degree… In comparison, almost two-thirds (64.7%) of the non-Indigenous population aged 25 to 64 had a postsecondary qualification in 2011. Of this group, 12.0% had a trades certificate, 21.3% had a college diploma, 4.9% had a university certificate or diploma below the bachelor level, and 26.5% had a university degree. The main difference between the Indigenous and non-Indigenous populations in terms of postsecondary qualifications was with the proportion of university graduates. (Statistics Canada, 2011).

Indigenous people represent one of the youngest populations in Canada, with one sixth of the entire Indigenous population being between ages 15 and 24 years of age, with the median age of an Indigenous person being 33.6 years of age (Anderson, 2021). Population growth is expected to continue to increase, with an even larger population proportion made up of youth in the coming decades (Anderson, 2021). Educational achievement of Indigenous groups across Canada have continued to improve, with higher completion rates of high school diplomas and with adults returning for further education such as acquiring a General Education Diplomas and accessing other adult learning and training. Post-secondary education has increased as well, where

> “First Nations people, Métis and Inuit all made gains in postsecondary education at every level. In 2016, 10.9% of Aboriginal people aged 25 to 64 had a bachelor's degree or higher, up from 7.7% in 2006. The proportion of Aboriginal people with a college diploma rose from 18.7% in 2006 to 23.0% in 2016” (Statistics Canada, 2017).

Although numbers of Indigenous people leaving formal education remain relatively high compared to other demographic groups, there remains a significant number that return to formal education as adults and succeed in achieving higher education, particularly with Indigenous women, and this trend has led to better labour market outcomes (O’Donnell & Arriagada). However, there remains significant gaps in the accessibility of post-secondary education services in rural, northern Ontario. This is partially due to lack of access to reliable internet and telecommunications infrastructure in the north which greatly limits virtual learning.

Resource development industries are prevalent in northern regions. Some of these industries include timber and logging, hydroelectric dams, and mineral and metal mining.

Resource extractive developments are prevalent in more rural remote areas and continue to be a major contributor to job opportunities available in the north. It is expected that mining will continue to be a dominant economic driver for northern communities. Rural and remote communities are experiencing more acute capacity issues because of a lack of access to services and combined socioeconomic barriers. Mining Operations are a significant industry represented in rural northern Ontario,with thousands of mineral staking claims and exploration projects occurring across the north. In the coming years there will be more technological advancements and new career pathways available, creating a higher need for skilled workers in northern communities. Investment into Indigenous communities to increase technical and skilled workers already in project vicinity provides a tangible pathway towards reconciliation.

In the past, there have been mining developments and other activities that couldn't be accessed by First Nations peoples on and off reserve. Some of the barriers were minimum requirements to have a Grade 12 Diploma or equivalent, needing Underground Common Core training, or other barriers such as substance abuse or criminal records. These barriers were highlighted through renewed booms in mining development across the Northeastern part of Ontario. To address these issues, there has been significant investments into training and skills development of skilled trades training. These investments were targeted to increase the skilled labour force representation of Indigenous peoples in the mining sector. This is exemplified in programs and services funded by government departments like Employment and Social Development Canada which has heavily invested into Indigenous organizations to increase capacity of people to participate in resource development activities. Government funding and proponent investment has given great momentum to Indigenous communities who have entered Impact Benefit Agreements (IBAs) or Memorandums of Understanding (MOUs), or other agreements, to access training and education pathways, particularly in the mining sector.

There is a critical need to invest into post-secondary education and technology skills training to proactively meet increasing development demands. These investments should encompass a broad scope, including but not limited to, the sciences, law, business, and information technology. The restrictive timelines of development are not conducive to developing skills within First Nations communities. IBAs and MOUs are proponent driven and are heavily dependent on project viability in a specific region. Once engagement with a community is occurring, timelines for development are already in place, particularly with mineral exploration where advanced exploration must occur.

Impacts Assessments are driven by the federal government and have strict timelines that begin at project submission to the Impact Assessment Agency. However many projects occurring in Ontario fall to provincial Environmental Assessment processes and are subject to different requirements. Both pathways limit the time necessary to respond to community

capacity needs. While needs assessments are already a common practice in the planning phase of resource developments, the ability for First Nations to exercise agency is limited when communities are forced to outsource work to consultancy groups. This requirement to outsource work to external consultants can become costly and does nothing to build skills in communities. However, the alternative is much worse where communities are not able to participate in development planning processes at all.

Investment into post-secondary education over a longer-term period is needed through combined efforts by governments, proponents, and communities. Leveraging the success of previous employment training initiatives and adult learning programs for Indigenous peoples is desperately needed to build the capacity of Indigenous communities, and to be able to respond equitably to the imposition of development on traditional territories. There is evidence that a significant portion of the underrepresentation of women in traditionally male-dominated fields, such as resource extraction, is partly because they do not want to participate for various reasons (NWAC, 2015; Pauktuutit 2022). Indigenous women and gender-diverse peoples are an untapped workforce that has continually experienced negative impacts from resource development while being unable to benefit from the positive aspects that emerge from resource-extractive industries. Giving youth and working-age groups the opportunity to learn about career pathways that would promote inclusivity in ways that are self-determined by impacted people, respects their agency as human beings, and generates alternative pathways for marginalized Indigenous persons to contribute to their community's socio-economic development and land protection.

11. **Recommendation:** Increase federal funding to education budget allocations for First Nation Reserves.

12. **Recommendation:** The government should provide for the implementation of wrap-around supports and increase breadth of support funding access (ex. child-care, wage supplements, removing limitations to education years, second-chance funds for mature students, investment into non-status people and children of s. 6.2 *Indian Act* status Indians)

13. **Recommendation:** Increase information accessibility through expanding telecommunication infrastructure and implementing technology access programs in remote communities. (S.6,32, Implementation & Redress)

Industrial Impacts on Our Lands, Our Traditional Territories

"The land is much beyond just an economic asset for Anishinaabeg. Land provides sustenance for current and future generations. It is connected to spiritual beliefs, traditional knowledge, and teachings. It is fundamental to cultural reproduction." - Anonymous

Many First Nations peoples we engaged with during our project activities expressed concerns about the level of resource extraction happening around them. The most frequent concerns expressed about mining was that it drives away game, poisons water sources, and kills fish. Concerns about forestry management practices were about the effects of sprayed pesticides and the worsening deforestation on traditional territories. Elders and Indigenous women, in particular, expressed grave concerns over impacts to water quality and stressed the importance of water as providing life and sustenance. We explore these economic drivers of Northeastern Ontario below. What is clear is that Indigenous peoples are concerned that they will not be able to continue traditional practices and subsistence lifestyles in the future due to development in their territories. Indigenous communities experience the environmental and social costs of being in close proximity to extractive industries while accessing little economic benefits from developments.

14. **Recommendation:** Increase taxation revenue sharing from extractive industries such as mining between provinces and Indigenous peoples affected by resource extraction to fund additional services for First Nations communities.

15. **Recommendation:** Establish best practices for First Nations consultations standards through analysis of previous consultation relationships between First Nations and various stakeholders to determine minimum standards of conduct and workload to be conducive to meaningful consultations. Compile and characterize individual Provincial, Territorial and Indigenous relationships in First Nations consultations and land use planning. Establish metrics measuring intersectional components such as inclusivity, diversity, qualitative and quantitative data points of people engaged. Analyze to highlight disparities, and utilize this information to generate standardized minimum required practices across jurisdictional practices, not only at the Federal level. These metrics shall be co-determined and co-created in partnership with First Nations communities.

Mining in Rural Northern Ontario

The mining industry heavily drives Northeastern Ontario's economic development, while intensifying environmental pressures on the land. Mining is one of the most significant sources of employment opportunities for Indigenous people in Northern Ontario, although the safety and security of such employment industries have been heavily criticized. Mineral and metal industries continue to be one of the largest employers of Indigenous people in rural and northern communities (NRCan, 2012). Indigenous people account for approximately 12% of the workforce of mines. Mining and resource extraction is a leading industry for Indigenous employment (NRCan, 2022). There are expected increased economic opportunities for Indigenous peoples with the announcement of the Canadian Minerals and Metals Plan. The federal government and a majority of provinces and territories have committed specifically to support greater participation of Indigenous women in engagement processes through elimination of barriers to employment by ensuring women have access to leadership roles (Government of Canada, 2022c).

Ontario is one of the two provinces that have not yet signed on to the Critical Minerals and Metals Plan, instead opting to generate their own 'Critical Minerals Strategy'. The Critical Mineral Strategy contains no explicit strategy on the inclusion of Indigenous women, girls, and/or gender-diverse persons. The only mention of women, besides statistics on representation in the workforce, outlines that efforts will be made to attract and train underrepresented workers (Ontario, 2022). While there has been substantial advancement in skills training and development *after* approvals have been acquired, less focus has been on proactive education and skills development to ensure participation in the planning and development of projects. In many cases, vulnerable Indigenous groups are effectively pushed towards being passive, rather than active participants, in resource development engagement activities (depending on their region and capacity to respond to consultations).

Women are especially limited in their ability to obtain high-level, fairly paid jobs in resource-extractive industries. When they do, they experience tremendous barriers in staying safe and supporting their families. Indigenous people are the least likely to be able to access the potential economic benefits of development, while being the most likely to experience the negative impacts of extractive projects. Beyond the economic barriers created by extractive industries, many projects are negatively impacting the overall health and well-being of local reserves. As a result of these cumulative impacts, many Indigenous peoples now live in an urban setting, largely due to the ability to obtain safer and more accessible employment opportunities. greater housing security, and more food and water security.

Historical trends of minimal state intervention in prospecting and early exploration and development have affirmed the prioritization of mineral interests over other interests, including surface rights owners and Indigenous peoples (Theriault, S. 2013). Free-entry mining systems

provide the rights for a miner to stake a claim to secure exclusive access to tracts of land to research publicly owned minerals, and these claims may be renewed should the claimant do the minimum required work under regulatory parameters (Theriault, S. 2013). The current staking process effectively renders the province to a passive role in the claim acquisition process. The first staker has priority to explore, rather than allowing authorities to determine preference to a mining staker that has stronger capacity and interest in fostering relations with impacted Indigenous communities (Theriault, S. 2013). Previously, Ontario's mining regulations did not require consultations to be done with First Nations prior to the recording of a mining claim (Drake, K. 2015). Prospectors in Ontario may also conduct 'low-impact' exploration activities prior to engaging First Nations in consultations, arguing that this exploration does not meet the requirements of triggering the duty to consult (Drake, K. 2015). This was partially rectified through Ontario's requirement to submit an exploration plan which is circulated to potentially impacted Indigenous communities who have 30 days to respond (Drake, K. 2015).

Mining developments usually fall within federal jurisdiction once advanced exploration has been undertaken. Developers are then ready to begin planning and conducting studies for project operations and acquiring regulatory permits, including Impact Assessment registration. Prior to this happening, critical time passes where developers conduct early exploration, feasibility studies, and other activities with little involvement of Indigenous communities. Many First Nations have asked for engagement to happen before prospectors enter traditional territory, let alone before staking mineral claims in the region. The regulatory timelines make it difficult for communities to conduct adequate engagement within their communities. Early exploration is largely an exercise to fulfill the minimum requirements of giving notice, typically in the form of a letter or email correspondence.

Development often brings an influx of business and economic development opportunities that emerge around operations such as exploration, development, operational and closure/ reclamation support services, as well as procurement opportunities to pick up contracts for food preparation, site maintenance, and supplies. Some First Nations are unable to become competitors with existing companies that offer similar services. Early engagement and reciprocal feedback can better position First Nations to be strong contenders for business entrepreneurship opportunities.

For Indigenous communities looking beyond consultations, our geographical locations are directly interconnected with our health and well-being as nations. For communities that live in resource rich areas, developers can take advantage of the lackluster and weakened environmental regulations and policies when planning and implementing mining developments. It can be argued that the provincial leadership in Ontario is so eager to dig up the boreal shield

that the ecological resilience of our province is currently at stake. Ontario's government recently announced amendments to the *Mining Act* which would:

- eliminate the technical review of mine closure plans by government officials;
- allow mines to proceed with development with incomplete closure plans;
- provide phased financial assurance in incremental amounts during construction of mine features;
- weaken site rehabilitation standards, and
- create a politicized decision-making process, moving decision making powers from the Director of Mine Rehabilitation and the Director of Exploration to the Minister of Mines (Mining Watch 2023).

These measures are not shocking considering recent amendments to the *Far North Act,* which removed protection on 225,000 kms of land, and removed provisions prohibiting the development of land that does not have a community-based land-use plan in place (Ministry of Northern Development, Mines, Natural Resources and Forestry 2021). Critically thinking about policy amendment implications for the people who are living with the results of extractive activities now and post-closure is crucial for meeting international conservation commitments, UNDRIP implementation, and respecting the health, well-being and dignity of northern Ontario residents and First Nations communities across the north.

16. **Recommendation:** The federal government needs to work with, or provide the capability to First Nations to work with, the Province of Ontario to revise the *Mining Act* to address consultation requirements at claim staking and prospecting/ early exploration on First Nations traditional territories. The federal government also needs to help address the regulatory weakness in Ontario legislation favouring developers interests over First Nations peoples.

17. **Recommendation:** Strengthening regulations to rigorously address and mitigate mining and extractive industry development in all phases of planning to post-closure of a mine.
    This recommendation upholds Articles 18, 19, 23, 25, 32 (1, 2, 3)

Forestry in Northern Ontario

Spraying and deforestation are destroying grounds where ceremonial practices have, and always, taken place. Forestry management practices are creating barriers for Indigenous peoples in Northern Ontario to collect medicines. Having healthy and resilient forests is crucial to practicing intergenerational knowledge transference, and have experiential learning opportunities on the land for hunting and gathering. The key priorities identified by project participants were to protect the environment, and to become better involved and informed in

forestry management activities. There are multiple reported cases of people seeing tagging on specific areas in the forest and not knowing what they meant, leading to confusion and anger as people assumed areas were being tagged for cutting. We heard that the consultation in forestry was only focused on guaranteeing a project's completion, which downplays or even ignores First Nations interests.

Participants voiced growing concern for specific medicines being affected by the deforestation of their lands. The main concern was birch trees. Birch trees make salves and teas that are vital to traditional medicinal practices. Elders are brought to these areas during the consultation process and can deem certain areas not harvestable by the forestry companies. They are then flagged, and the surrounding trees are not harvested to protect and ensure the survival of the birch trees. Only when it is established that there is enough medicine to be harvested and used by the current generation, and enough to leave behind for the next generation, will forestry initiatives be given consent. It is possible to work with communities and obtain their consent. However, in the current structure of consultations, communities are pressured to provide their consent, rather than given space to grant or withhold consent on their own terms.

Many First Nation communities are excluded from making any significant management decisions on their traditional territories. First Nations have the opportunity to review and provide feedback and comments on Annual Work Schedules (AWS) and/ or Forest Management Plans (FMPs) that are periodically drafted for a period of ten years (OMNRF, 2020). However, these are largely participatory measures that provide information and not input into planning processes. First Nations communities have adopted varied methods of engagement and information dissemination to their membership, which is often left to lands and resources coordinators. At times, there are no more than 30 days notice for AWS (Personal Communication, Anonymous March 2023). Indigenous people from multiple communities continue to express frustration and feelings of exclusion from larger development processes. Strengthening consultative parameters to joint partnerships is a favourable solution to many. This would ideally entail having representation at the table for the drafting of AWS and FMP’s, full participation of implementation and monitoring of FMPs, and more equitable distribution of forest benefits as well as opportunities for direct agreements with timber and logging companies (Flood, T. 2021).

18. **Recommendation:** Implement supports for First Nations communities to assist in the co-planning and co-generation Forest Management Plans in conjunction with other stakeholders to ensure representation of Indigenous interests from planning outset.

This recommendation upholds Articles 18, 19, 29 (1), 32 (1, 2, 3)

19. **Recommendation:** Implementing forestry management education programs to achieve better understanding and relations between First Nations communities, forestry industry proponents, and governmental representatives.

Water Security for First Nations Communities

> "The water needs to be talked about more. We discuss our rights and responsibilities to protect land, but we need to be focusing more on protecting our waters. Many communities do not have access to clean drinking water, and many communities are told that their water is safe to drink, and it makes them sick."
> - Anonymous

Anishnaabe people believe that water nourishes all of the beings of creation, water is pure and sacred, and cleansing (Willliams, D. 2018). The impacts to water bodies on traditional territories has gender-specific impacts for First Nations people, particularly women. Water has spirit, it contains emotion, and is considered the lifeblood of mother earth. Babies are carried in water, and born from it, and the consumption of water sources can directly impact the health and well-being of people, and for mothers and their unborn children. It is highly significant and consequential to Indigenous peoples when pollutants are allowed to be disposed of into water bodies, and people have expressed grief over not being able to drink directly from lakes and rivers any longer.

Although UNDRIP only makes specific references to water twice, the consistent language used throughout referring to Indigenous "lands, territories, and resources" is widely interpreted to include water as well. Water rights are inherent rights of the people and are regarded as a fundamental human right. The UN General Assembly and the Human Rights Council recognized the human right to safe drinking water and enshrined it into international law in 2010 (United Nations, 2023). These water rights establish the right of all people to have access to safe, affordable, and accessible water which can be used for *both* drinking and sanitation purposes (United Nations, 2023). The UN clearly outlines that the physical *presence* of water is not equal to the ability to *access and use* water, and that each person is entitled to accessible water sources, free of discrimination or barriers (United Nations, 2023). Despite these fundamental international rights, over 2 billion people globally lack access to safe drinking water (United Nations, 2023).

In 2015, the Canadian government made commitments to end all long-term drinking water advisories by March 2021, later extending this deadline to 2026 in light of the 99 active long-term drinking water advisories that were still in place across Canada in November of 2021 (McDonald, Yenilmez, *et al.,* n.d; Xue Luo, C. 2021). Some of these water advisories date back to 1995, and have been in place for over 20 years, such is the case in Neskantaga First Nation in Northern Ontario which has been under a boil water advisory for 28 years (McDonald, Yenilmez, *et al.,* n.d). As of 2011, 73% of First Nations' water systems were ranked as a medium-high risk of contamination (McDonald, Yenilmez, *et al.,* n.d). These statistics have only minorly been improved in the last decade, demonstrated by the 99 active water advisories still in place in 2021 (Xue Luo, C. 2021). These trends demonstrate a clear lack of improved access or preventative action being taken to protect water in Canada, despite the Canadian Government's commitment to doing so.

Drinking water advisories vary from region to region, with Ontario having a significantly higher number of both short and long term advisories compared to any other province. A stark example is that in 2021, Ontario alone had 51 active water advisories and the neighbouring province of Quebec had none (Xue Luo, C. 2021). It is important to note that in Canada, only the province of Quebec has enshrined water rights into legislation (LégisQuébec, 2023). All other provinces lack explicit recognition of water rights as a legislated right, and it appears that without this legislative protection, the access to water of people living in these regions suffers immensely. It must be considered, however, that differences in provincial water regulations could give the illusion of better water protection, when in reality the water quality standards are much lower, allowing significantly less water advisories to occur. There is a dire need for a consistent, federal acknowledgement of water as a fundamental right, and a baseline water quality standard that applies equally to all provinces and territories. The United Nations has called for governments to take a human rights-based approach to water and sanitation, an approach that should align with the Government of Canada's commitment to implementing UNDRIP (United Nations, 2023).

Canada has some of the largest reserves of freshwater in the world and has been ranked the second best water quality of industrialized countries based on an Environmental Performance Index (Government of Canada, 2017). Canada also has an estimated 2.5 million navigable rivers and lakes (West Coast Environmental Law, 2018). As such, we have a global responsibility to protect and preserve our water, sharing it with countries who do not have access to fresh water since water is a fundamental human right that transcends borders. How can we satisfy this immense responsibility when we cannot even provide clean drinking water to communities across our own nation? We heard stories from Elders about how they could previously drink directly from streams, lakes and rivers. Already, in only one generation, we see that this is no longer the case for the very same water bodies that were previously pristine.

Without water protection and regulation enshrined into legislation, how will these same rivers be left for the next generation? We cannot stand by and allow industrial effluent, agricultural runoff, and municipal sewage pollution to continue contaminating our waters. The increase of contaminants entering water bodies in the last decades has intensified largely due to the deregulation of environmental protection.

In 2019, the *Navigation Protection Act* became the *Canadian Navigable Waters Act* (West Coast Environmental Law Association, 2018). This approach focuses narrowly on the use of water bodies for navigational purposes, neglecting the environmental, social, and cultural values associated with water (West Coast Environmental Law Association, 2018). By changing the definition of what consists of a navigable water body, a significant number of lakes that were previously legally protected are no longer receiving protection. The removal of protection on these lakes and rivers opens up more of Northern Ontario for development operations that overlay lakes and rivers, contributing to pollution and tailings effluents into our watersheds, lakes and rivers. Effectively, these changes are a step backwards in terms of environmental protection and the impacts are already being made apparent. It is clear that without strict regulation and protection, developers and extractive industries will continue to pollute water, and the effects will be significant and widespread.

20. **Recommendation**: Enshrine the right to water as a fundamental legislated right federally and in provinces and territories across the country.

21. **Recommendation:** Uphold the values of Indigenous women. This requires a distinctions-based approach to understanding women's roles as Water Keepers in water conservation efforts, and they must be included in conservation planning. (S.6, 29,32,18, General Principles, Environment)

22. **Recommendation:** Enact rigorous and restrictive effluent disposal standards that protect watersheds, lakes and rivers that vastly improve existing legislation such as the Metal and Diamond Mining Effluent Regulations and the *Fisheries Act*.

23. **Recommendation:** Conduct a comprehensive review and investigate effluent disposal into water bodies to determine the extent of how Canadian waters are polluted.

24. **Recommendation:** Investigate more stringent and aggressive mine waste regulations at both the federal and provincial level.

25. **Recommendation:** Reinstate regulatory protections over the lakes and rivers impacted by the *Canadian Navigable Waters Act*, remediate harms against previously deregulated waterways, and violates the rights of First Nations peoples to sustenance practices and clean drinking water.
Upholds UNDRIP Articles 17(2), 24(2), 25, 26(3), 29(1,3), 32(3)

Impact Assessments and Environmental Assessments

> "These people [*Industry, Government*] do not have a direct connection to the communities therefore they do not care what happens to them or how the project affects them." -Anonymous

Impact assessment processes do not uphold the rights of Indigenous people as established in UNDRIP. Previously known as the environmental assessment process, the *Canadian Environmental Assessment Act* (CEAA) was updated in 2012, after being originally established in 1992 (Government of Canada, 2016a). Environmental assessments under the CEAA were created to predict impacts of proposed projects with the goal of minimizing the environmental effects before they occurred, and to consider the environmental impacts of projects in decision-making (Government of Canada, 2016a). These environmental impact assessments quickly became the topic of widespread criticism, largely due to their failure to consider social, health, or economic factors. Despite having over 700 proposed amendments to Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, the Bill was passed anyway, inciting concern for the lasting negative consequences of this regulatory decision (Crawford, 2018). This demonstrates that the concerns being brought forward are not translating into tangible policy development and improvement.

In an assessment done by the West Coast Environmental Law Association, the CEAA received a failing or incomplete grade in *all* areas of consideration, including: strengthening public participation, adopting sustainability as the core objective, meaningfully involving Aboriginal governments as decision-makers, requiring comprehensive cumulative effects, and other essential considerations (West Coast Environmental Law Association, 2013). More specific critiques have surfaced related to the contractual nature of projects, limited agency resources, rushed timelines, neglect of the best-available science and technology, and bias to scientific knowledge (Wright, *et al.,* 2013). The most significant environmental criticisms are the lack of consideration for cumulative effects, non-lethal impacts, and habitat degradation, which can combine to have significant effects on ecosystem health (Wright, *et al.,* 2013).

It appears the government has listened to these concerns and has attempted to make modifications to improve the environmental assessment process by creating the *Impact Assessment Act* (IAA) in 2019, which considers social, health, economic, *and* environmental factors (Government of Canada, 2019). Although this increased scope of assessment is an improvement to previous legislation, this change did not satisfy many of other concerns relating to the environmental analysis being insufficient. When looking at the same assessment done by West Coast Environmental Law, the overall grade of the IAA was a C, although this is an improvement from the previous failing grade attributed to the CEAA (West Coast Environmental Law, 2019). There is still much room for improvement in impact assessment processes. Impact assessments are an integral mechanism towards achieving reconciliation, upholding UNDRIP, and restoring credibility to federal decision-making over resource development imposition on First Nations territories. Without meaningfully and equitably including Indigenous people, allowing them to be a part of land-use planning, and using traditional knowledge to supplement scientific knowledge in all phases of project planning and implementation, these processes will remain unable to protect the natural world since they are not considering all possible knowledge of the natural world and future consequences of project impacts seven generations into the future.

In response to the updated IAA, we heard from community members that the new process did not address the criticisms of rapid timeline concerns that were presented in response to the initial CEAA. In fact, the IAA further shortened the mandatory timelines for assessments (Clogg & Johnston, 2019). The IAA also fails to make the most sustainable option the required path to be taken. For example, the IAA omits larger regional assessment factors such as cumulative impacts because they are deemed too broad for the scope of a single assessment (Clogg & Johnston, 2019). This instills extreme concern for the risk pile up that will occur as several large-scale projects take place in the same area, as communities are left to clean up the mess from previous projects, while simultaneously trying to meet timelines to meet consultation demands of future projects.

The IAA allows more projects to go without an assessment at all, removing the requirement to assess impacts on over 90% of projects that would have been captured by the CEAA (Clogg & Johnston, 2019). Only projects with the greatest potential to create adverse effects that are within the federal responsibility will be subjected to an impact assessment. This means that a significant effect will have to be predicted, according to multiple factors, to be even considered in ministry decision-making over projects (Clogg & Johnston, 2019). The IAA should be strengthened to apply to *any* projects that are likely to cause adverse impacts. The potential cumulative effects from several small to mid-sized projects could aggregate and create significant, long-term adverse impacts. It is essential to understand how projects, both big and small, will present impacts on the surrounding communities and environment.

When engaging with people in communities, we heard that people want to participate and maintain decision-making powers within their traditional territories. Many participants expressed significant concerns related to resource extraction and the negative impacts the industry could create. Most people expressed that they wanted to be more involved, however, they either didn't know how to, or did not have the time and capacity to do so. Participants who had participated in impact assessments before expressed that the extent of complex and technical information that was expected to be reviewed was daunting and discouraging. Even when they were able to review the hundreds of pages of content and provide a comment, community members felt frustrated that they had no role or power in the decision-making process. The federal government maintains the sole decision-making power, which effectively politicizes the environmental process and wrests control from both First Nations and the Impact Assessment Agency to maintain authority over final decision-making processes and effecting project conditions on proponents. This has serious implications because the recommendations of the Impact Assessment Agency of Canada (IAAC) may be essentially modified, weakened or otherwise modified with no scientific basis.

While Indigenous consultation is underscored as a key feature of the IAA, the reality of the limitations of powers makes the comment collection period feel preformative, since the comments need only to be considered and not given any authority in the decision-making process. It was called for by community after community to give Indigenous people a seat at the table on an early and ongoing basis. It is not enough to include Indigenous people to simply check off the duty to consult has been discharged without actioning what is being said.

Indigenous knowledge must become a part of the impact assessment process and be given equal consideration as western, scientific knowledge systems are. Without consistent inclusion and equal representation, communities remain dissatisfied with the new impact assessment process. Beyond extending the scope of projects that fall within IAA, more knowledge systems must be considered. The bias towards science and western knowledge that has persisted in federal decision-making has left Indigenous communities out of the conversations and left to face the impacts of project developments in isolation. These communities are the very same communities who are the most impacted by resource extraction, and are given the least power in decision-making processes. To fulfill the promise the government made to uphold the UNDRIP and walk the path of reconciliation, Indigenous people must have a seat at the decision-making table, must be given the time and support necessary to lead and review impact assessments, and must be regarded as credible sources of knowledge.

The IAAC has made specific statements on the implementation of UNDRIP, stating that UNDRIP was foundational to the development of the IAA and remains at the core of federal

assessment processes (Government of Canada, 2021b). The IAAC applies a model to consult with Indigenous peoples that was developed on behalf of communities, without Indigenous representation or inclusion in the development of this model. Each community has unique and specific needs which cannot be relegated to any single model. A single consultation model cannot adequately encompass the variety of capacities or ways of knowing and doing that are present in Indigenous communities across Canada.

The IAAC states that “We work together from planning assessments all the way to the post-decision phase…” (Government of Canada, 2021c). This statement fails to recognize that Indigenous people are not given power in the decision-making phase, and are merely strung along through colonial processes and are left to monitor the decisions that were made without them. Additionally, this fails to recognize that Indigenous people are expected to participate in impact assessments on a voluntary basis, being expected to keep up with dozens of active projects, while trying to maintain their personal lives outside of these developments. In order to truly center reconciliation, ethical space for research and collaboration need to be created, rights affirmed in UNDRIP need to be meaningfully implemented, and the comments and concerns of communities must be actioned. It is untrue to claim that “the Impact Assessment Act…does not need to be changed in light of the *United Nations Declaration on the Rights of Indigenous Peoples Act*” (Government of Canada, 2021a) when communities are specifically calling for improvements, transparency, and equal weight in decision-making.

26. **Recommendation:** Ensure Indigenous people are being included equally in land-use planning and impact assessment processes, including the decision-making stage.

27. **Recommendation:** Consider Indigenous knowledge and traditional ecological knowledge led by communities as equal to Western scientific knowledge without creating a hierarchy of validity.

28. **Recommendation:** Mandate proponents to thoroughly research and understand contemporary Indigenous issues and priorities. Communities must be involved in evaluation and determination of project success and compliance indicators. (S.5,29,32,General Principles)

29. **Recommendation:** Mandate employment equity plans in resource development corporations’ policy implementation, and demand concrete and transparent mechanisms of consultation delivery to ensure equal representation of diverse subgroups.

30. **Recommendation:** Require data collection and analysis that articulates accommodation measures undertaken by project proponents, contributing the baseline data of practices that may be applied to a variety of projects. Upholds UNDRIP Articles 26, 27, 29, and 32.

Traditional Ecological Knowledge in Land Use Planning

> "We had our own government systems and laws. We had our own food systems. The treaties were meant to be on top of what we already had. It has instead been a mechanism to hold us down and take what we had from us. Treaty peoples have rights, and we must use them to defend ourselves. To do so we must know our rights. That should be the first thing taught to our people so we can go out into the world and know the truth. We have responsibilities and obligations to turtle island." - Anonymous

When considering the worldviews of Indigenous and European people regarding the natural world, there are many similarities in the ways in which both have come to know nature. Both Indigenous and European people's knowledge emerged from the need to make sense of the natural world to understand how to take care of themselves. Both systems are a culmination of knowledge gathered through observations, and each share intellectual processes such as questioning, looking for patterns, predicting, verifying, problem-solving, adapting, and more (Aikenhead, G. 2011). Over time, each system has grown and evolved to encompass a separate set of priorities, and therefore types of knowledge being collected. There remains fundamental disparities in the ability for Indigenous communities to further their community goals and priorities in the larger socio-economic landscape of Canada, especially in rural remote regions in the north. A major contributor to this is the power disparity in knowledge applications between Indigenous and Western ways of knowing and being. The heavy emphasis on scientific and economic value has led to a limited and narrow scope through which to view nature as 'natural resources". Further, resource development proponents have tremendous power and influence in the political sphere. This disparity in views of the natural world is demonstrated in the significant shortcomings of the federal and provincial governments to enact rigorous environmental legislation or sufficiently diversify the Canadian economy from traditional staples exports (VanNijnatten, D. 2016).

Traditional Ecological Knowledge (TEK) is a cumulative combination of environmental knowledge, resource utilization practices and the sociological worldview of Indigenous people (Tang, R. 2016). TEK is under threat by colonial institutions that have interfered with the transference of knowledge over generations. Loss of traditional institutions, changes in the

environment and natural resources, changes in traditional livelihood practices and loss of pathways of TEK transmission (language, on-the-land learning) are all major contributors in the erosion of TEK (Tang, R. 2016). Mino-mnaamodzawin (or mino-bimaadiziwin) emphasizes the importance of respectful and beneficial relationships between all of our relations, including many things that are not considered “alive” to non-Indigenous people, such as rocks, water, and wind (McGregor, D. 2018). An example of contrasting worldviews is demonstrated by Indigenous people knowing that water is life, water is the blood of the earth, and it sustains and protects all living beings, so to pollute it violates the water, destroying it for all the beings of creation that swim in it, drink it, live around it (Bedard, E. 2008). The issue Indigenous peoples face in sharing TEK is that this knowledge requires more than simply engagement or input into policy initiatives. TEK needs to actively guide policy and project implementation (McGregor, D. 2014b). The issue is a lack of respect for the intellectual process and knowledge carried by non-dominant entities. Respectful and meaningful dialogue between nation and industry emerges when control over Indigenous knowledge by Indigenous people is maintained (Bullock, R. 2019).

Bureaucratic processes cannot comprehend a value rather than a tangible right explicitly stated in the original treaties. It raises the question of who gets to decide what is relevant to Indigenous livelihood? Who decides what is applicable knowledge and what isn’t? Anything that we think is a tradition was once considered an innovation. The rhetoric of water being a resource to be managed is imposed on Indigenous people by colonial powers. The separation of water as a living being versus a resource was created by outside powers. Now, water is viewed to be managed on Indigenous people’s behalf. If a request by Indigenous peoples to protect a resource is too expensive or not feasible, then it may be rejected. The consultation process thus far has been an exercise of note-taking and inaction in many instances. There is a significant amount of academic and grassroots research demonstrating a need and interest in inclusion of multiple knowledge systems that do not conform to colonial parameters. There is growing evidence suggesting that a combination of scientific and Indigenous cultural knowledge is necessary in effectively addressing localized environmental issues (Alexander, C. 2011; Wilson, N. 2019).

The implementation of cultural precepts and measures that protect traditional practices often synergizes with ecological protections and could therefore, be considered an adoption of a type of ‘voluntary approach’ to environmental protection, beyond the minimum regulatory requirements of federal legislation. These practices are notably included in academic literature concerning the level of involvement Indigenous peoples should have in the decision-making process, from the perspective of both energy developers, lawyers and Indigenous academia (Laurin, W. 2015; Milne, C. 2018; Papillon, M. 2017; Wilson, N. 2019).

Indigenous consent in resource development project negotiations is often conditional upon additional monitoring, conservation, and incorporation of TEK into development planning from the outset (Papillon, M. 2017). Accommodations from resource development projects typically involve area-specific requests, including the avoidance of game tracks, medicine gathering areas, or other areas of traditional importance in the project planning phase. Depending on the project, wildlife monitoring technology and reporting could be included, or fish spawn counts and impacts to plant life around project areas could be tabulated. Additional seasonal testing results may need to be gathered. Special care may be requested in the prevention of wildlife entering development compounds, like netting cast over tailings ponds to prevent waterfowl from landing in it. These elements of Indigenous knowledge and values are easily understood and actionable. However, other aspects of knowledge less easily understood are ignored or marginalized, such as spiritual values (Muller, S. 2012).

The need for community members to return to traditional ways of assisting one another is another topic of concern. Many Elders no longer have family nearby as their children are often forced to leave the reserve to find employment. Many youth move away after gaining an education because they cannot find adequate employment to encourage them to stay. Many young people need to be given the opportunity to learn about their culture because they are disconnected from Elders in their area. Bringing moose meat to community members allowed one participant to learn traditional knowledge from Elders and a feeling of connection to all the people living on the reserve. When speaking to several Elders, their knowledge and connection to their culture were often obtained by hunting, trapping, and gathering materials from the lands. With many projects moving closer to traditional lands, their trap lines and hunting areas are being affected. This is causing a disconnect for many people to be able to practice long-standing traditions, and the knowledge which needs to be passed down to their families. The loss of traditional language was a significant concern. The issue of erosion of traditional practices because of colonial imposition was frequently brought forward when discussing how to engage in land-protecting practices and groups. The feedback we gathered from our engagement with the elders demonstrated concern around indigenous youths' involvement in land responsibility planning. The importance of maintaining the traditional lands for future generations and the inherent right Indigenous peoples have on turtle island was additionally a common theme.

Many of the Elders grew up on reserve and were forced to leave for several reasons. The families of these elders are spread out across northeastern Ontario and beyond. Traditional Knowledge is passed down in many ways. Some use songs and ceremonies, while others hunt and gather resources on the land to teach the youth about the importance of protecting those resources. Many of the Elders are concerned about the resources on traditional territories. For example, birch trees are being removed from land and these trees offer traditional medicine.

Additionally, the effect of deforestation is forcing moose populations to migrate further south. Animals are being affected by the spraying of harmful chemicals and, therefore cannot be harvested.

31. **Recommendation:** Governments must ensure appropriate timeframes are implemented to respectfully obtain and convey collective knowledge from community members, including relational knowledge and contextual background information in legislation that requires consultation with Indigenous communities. This includes lengthening timelines, implementing vigorous notice schedules, and communicating with First Nations communities.
(S.6, 32,27,Lands, Territories & Resources)

32. **Recommendation:** Mandate equitable inclusion in land planning strategies on ancestral lands. For example, having Elders be a part of resolution boards to discuss the planning and development of resource extraction projects. (S.32,27, Lands, Territories & Resources)

33. **Recommendation:** Investigate land use planning mechanisms that can incorporate less tangible elements of traditional knowledge, such as spiritual and cultural significance, traditional principles, and values. Implement a policy framework of TEK implementation mandatory for implementation standards in all major industries, including mining, forestry, and agriculture.

    Upholds UNDRIP articles 8(1,2), 11(1,2), 12(1,2), 13 (1,2), 31

First Nations Lands Management Legislation

> "It is discrimination, they've put us in one little section that cannot support all the members with status." - Anonymous

> "Anishinaabeg can't choose their own way of life, get control over their own education, healthcare and so on, unless their lands are secure. That's the overwhelming priority. All other issues are secondary. If their land rights are recognized, we peoples thrive." - Anonymous

Article 26(3) imposes an obligation on states to give legal recognition and protection to lands, territories, and resources. This recognition shall be conducted with due respect to the customs, tradition, and land tenure systems of the Indigenous peoples concerned. Article

8(2)(b) imposes an obligation on states to provide effective mechanisms for the prevention and redress of any action which has the aim or effect of dispossessing Indigenous peoples of their lands, territories, or resources.

The *Indian Act* is the primary piece of legislation that governs how reserve land is managed. There are roughly 35 sections of the *Indian Act* that deal with lands and resources on reserve (Lavoie & Lavoie, 2017). These uniform land-use laws govern all reserves unless a community opts out of these provisions.

The primary mechanism to opt-out of the Indian Act land-use regime was the *First Nations Land Management Act* (FNLMA). The FNLMA was repealed and replaced on December 15, 2022 with the *Framework Agreement on First Nation Land Management Act* (FAFNLMA). The way the FNLMA worked, and how the FAFNLMA works, is by referencing an agreement titled the "Framework Agreement on First Nation Land Management" (the "Framework Agreement") (Lands Advisory Board, 2022). This Framework Agreement has been in use since 1996 and has been amended seven times, with the last amendment occurring in 2022 (Lands Advisory Board, 2022). Under s. 57 of the Framework Agreement, amendments to the Framework Agreement must be approved by 2/3 of the signatory First Nations to the Framework Agreement (Lands Advisory Board, 2022). Once a First Nation approves a land code under the Framework Agreement, approximately 44 provisions of the *Indian Act* cease to apply to that First Nation (Lands Advisory Board, 2019).

The Framework Agreement has many requirements, but a main requirement is the creation and approval of a land code by a First Nation opting into the framework agreement.[28] The differences between the FNLMA and FAFNLMA will not be discussed in this report, but it should be noted that the FAFNLMA is purported to correct inconsistencies between the Framework Agreement and the FNLMA, and emphasizes the central importance of the Framework Agreement for their operative provisions of this land management regime (Lands Advisory Board, n.d.). These legislated changes were initiated by the signatory First Nations of the Framework Agreement (Lands Advisory Board, n.d.).

The problem with the FAFNLMA and the Framework Agreement is that it only applies to reserve lands in Ontario that are under the legislative authority of the federal government.[29] The scope of Articles 26(3) and 8(2)(b) of UNDRIP contemplate not only the "lands" of an Indigenous group, but also the territories and resources. There is a real chance that "lands" in UNDRIP, when applied to First Nations communities, will only be interpreted to apply to reserve lands or aboriginal title lands. Reserve lands do not encompass all the lands that were historically used by First Nations people prior to colonization. Furthermore, the territories and lands of First Nations people outside of reserve lands are incapable of being captured by the

UNDRIP Act because these lands are understood by the federal and provincial governments as provincial lands. The UNDRIP Act, as discussed in the beginning of the report, only imposes obligations on the federal government.

One argument against the FAFNLMA and the *Indian Act* land management regimes is that they reinforce the status quo that reserve lands are the primary lands that First Nations have a right to manage. Article 8(2)(b) obligates the state, in this case, the federal government, to prevent and provide redress for the dispossession of lands, territories and resources. By continually limiting First Nations communities to specifically allotted plots of reserve land and denying power over traditional territories, there is an ongoing and continuing dispossession of First Nations peoples and their territories that exist outside of reserve lands. Furthermore, it is unclear if UNDRIP will apply retroactively for past dispossessions of land[30], or if not, at which time these dispossessions will be prevented and redressed.

A key insight during our engagements was the importance of indigenous communities developing their own plans and processes to empower communities to assert their rights and priorities rather than solely relying on the government. We heard of difficulties within the Lands and resource departments of smaller First Nations. The participants spoke of a lack of consideration of community values during consultation processes and the waterways being impacted but not under the jurisdiction of the First Nation to properly protect them. There remains grave concerns from people we engaged with about cumulative impacts that are continuing in lakes and shorelines. The health of the community is not being taken seriously by industries, and TEK is not being included in documentation leading to the feeling of being ignored.

Another topic of concern is discrimination against non-status Indigenous peoples. Where differences in status among family members can cause disparities in housing security and ownership. This highlights the issue of discrimination and inequality in regard to land and home ownership due to imposed rules of the *Indian Act*.

34. **Recommendation:** The federal government must provide redress for the historical and ongoing dispossession of traditional lands, territories, and resources.

35. **Recommendation**: The federal government must empower communities to have stewardship and control over their traditional lands, territories, and resources that are not limited to reserve lands.

36. **Recommendation**: Review provisions of the *Indian Act* that arbitrarily discriminate against non-status Indigenous community members in relation to housing and land rights.

Indigenous Protected and Conserved Areas Establishment in Northern Ontario

Canada's pathway forwards to meeting conservation targets requires reconciliation and true partnership with Indigenous communities. For decades, Indigenous knowledge has been cast to the side in favor of western, scientific knowledge. The result has been a disconnected environmental value system where corporations and government agencies are making decisions which affect lands they do not live on, rely on, or respect. Widespread environmental degradation has occurred because of colonization and capitalistic land management systems. Without elevating Indigenous knowledge systems, traditions, and cultural practices these harmful trends will only intensify further. Indigenous Protected Conservation Areas (IPCAs) consist of lands and waters where Indigenous governments lead in conservation and protection decisions, playing the primary role in governance and decision-making (Indigenous Circle of Experts, 2018). IPCAs are Indigenous led, representing a long-term commitment to regional conservation, elevating the rights and responsibilities of Indigenous peoples (Indigenous Circle of Experts, 2018). The establishment of IPCAs should be considered a multi-purpose and effective tool to be used in land protection, conservation planning, and policy creation. Establishing permanent sovereignty over natural resources for Indigenous people, as is their fundamental right, has been an emerging concept in academia as the need for Indigenous inclusion in conservation is made clear (Pereira, 2014).

IPCA's are particularly important in regions of boreal forest, and ecosystems that have been highly altered and impacted by industrial development projects, because they protect the remaining wildlife habitats and secure traditional lands that are critical in the exercising of Indigenous rights such as the right to hunt, trap, and fish (Moola, F. 2019). Indigenous people within northern Ontario have a unique ability to participate in land planning strategies that ensure input in how and which areas are protected and managed (Moola, F. 2019). There is a tremendous opportunity for conservation in Northern Ontario, particularly in Treaty 9 territory. Major development projects in the far north, such as the Ring of Fire, are eroding potential areas of conservation. Ontario has a lackluster history of Indigenous inclusion in conservation areas and is non-committal in the Ministry of Indigenous Relations and Reconciliation role in biodiversity protection. Ontario has omitted the establishment of IPCA's in their strategic biodiversity conservation plan, particularly the priority area of expanding the current system of protected areas and conserved lands (Ontario, 2020).

Furthermore, the provincial government of Ontario recently approved a series of amendments to the *Far North Act, 2010* which removed provisions that hinder economic development in Northern Ontario, and added cost savings measures for project proponents. It also notably removed reference to the protection of 225,000 square kms of interconnected protected areas (Ministry of Northern Development, Mines, Natural Resources and Forestry 2021), facilitating the expansion of project overlay on sensitive watersheds and regions with significant biodiversity and peat sequestration services. The current atmosphere of changes and push-pull of opposing worldviews in Northern Ontario is demonstrative of provincial priorities siding with project implementation at the cost of Indigenous livelihood and essential ecological services.

In reflecting on the changes to Ontario's *Far North Act, 2010* and unabashed support of development in the north, the likelihood of provincial initiative for land protection is grim. In the rush for development and economic benefits, the onus of land protection is falling again to First Nations who are publicly calling for all Canadians to consider ecological impacts and resiliency Baiguzhiyeva, D. (2022). The Province of Ontario and the Ministry of the Environment have the opportunity to issue strict protected area parameters that are informed by Indigenous input and outline areas of importance both ecologically and traditionally. For example, a "corridor" within the Ring of Fire project area could be created which would allow for wildlife to move in and out of Winisk Provincial Park in less dangerous ways. Other ways this could be achieved is the shrinking of project area permits to only the most concentrated veins of minerals and leaving the rest undisturbed, or to permit exploration in stages. These recommendations can stem from Indigenous initiatives and be informed by traditional ecological knowledge and Indigenous worldviews. However, the responsibility to intervene currently rests with the federal and provincial governments, which makes nation-to-nation engagement absolutely critical in creating better project outcomes. The push and pull between economy and ecological values have been demonstrated in fierce negotiations with high-stakes costs associated with all parties (Stanley, A. 2021). Priorities in the province of Ontario are not Indigenous-focused. With development pressures mounting in the north, the equitable allocation of lands between development and protection will be difficult to reconcile.

A major contributor to the success of initiatives such as IPCA's is supporting talented and effective leadership within Treaty 9 territories as an essential component to the long-term success of these recommendations. Leadership development should be founded in conjunction with the framework laid out in the *We Rise Together* report particularly in regard to:

1. being Indigenous-led;
2. involving modern application of traditional values, Indigenous laws and Indigenous knowledge systems as a must;
3. respecting protocol and ceremony;

4. supporting the foundation of Indigenous and conservation economies (Enns, E.; et al, 2018).

This would involve considerable consultation and teamwork between involved Cree and Ojibwe nations, as well as the Government of Ontario and Canada in order to produce a meaningful and long-term framework for establishing effective IPCA projects within Treaty 9 territory.

The assertion of Indigenous rights and livelihood are inherent and cannot be drawn from the historically numbered Treaty 9 which purports to extinguish title to land and resources. The limitation of authority to reserve boundaries for First Nations peoples may be partially addressed through meaningful implementation of domestic and international obligations, such as the TRC of Canada and UNDRIP. Indigenous Clean Energy's *We Rise Together* report has also been a useful tool in establishing frameworks for IPCA's and their potential to aid Canada in meeting its contributions towards Aichi biodiversity targets, while presenting an opportunity for improved relationships between Indigenous communities and western societies. Bringing together diverse knowledge sources and respecting other ways of knowing and being will bring greater protection of lands. In this competing junction between industry, government, and First Nations, the future outlook for Northern Ontario is uncertain and potential for collaborative land protection has never been more critically important.

37. **Recommendation:** Promote the establishment of Indigenous Protected and Conserved Areas in Northern Ontario.

38. **Recommendation:** Mandate community land use plans to be in place on potential areas of development on alleged crown lands.
Upholds UNDRIP Articles 11, 25, 27

Renewable Energy and Energy Autonomy

> "There's a lot of us with status, but we live off reserve and we cant even go home cause theres no capacity for hydro or housing in the communities." - Anonymous

The global need to reduce greenhouse gas emissions is well understood as international commitments and agreements have been brought forwards for decades, such as the Paris Accord and the Kyoto Protocol (UNFCCC, 2016; UNFCCC, 1998). Canada has developed extensive planning to achieve net-zero emissions by 2050, as enshrined into legislation by the *Canadian Net-Zero Emissions Accountability Act* (Government of Canada, 2023b). However, these plans, international accords, and agreements are not drastic, nor immediate enough to adequately protect the planet. Many countries have committed to cutting emissions only

minimally, some countries committed to not cut any at all, and most, like Canada, committed to cutting emissions too slowly. Net zero plans are achieved by the overall combination of emissions and offset technology to equal zero, accomplished by investing in carbon offsets, carbon-capture technology, or expanding protected and conserved land (Gerhardt, 2021). The simple reality is that emissions do not need to be reduced to *net* zero, they must be reduced to zero, and immediately.

Climate change, land-use planning, and future development planning is ultimately an Indigenous rights issue. Therefore, Indigenous rights must be centered in all future policies and project planning. Increasing the supply of renewable energy and allowing Indigenous communities to lead this transition is a multi-faceted, intersectional pursuit that benefits all the beings of creation. Most rural and remote communities are dependent on diesel and oil-based energy, as they are without more affordable, sustainable options (Cutfeet, 2019). Resource extraction projects have emerged predominantly in or around Indigenous communities, prioritizing economic prosperity and neglecting to consider the environmental, social, and health impacts they would generate (A SHARED Future Research Team, 2019). When mining and non-renewable energy projects take place, they yield long-term environmental impacts, leaving the communities who have lived in harmony with these lands since time immemorial to live on polluted and exploited land long after mines cease operating. While it is true that there is a very real reliance on these metals, it must be understood that these metals are not an infinite resource and that the social and environmental costs of extraction are ever increasing (Cutfeet, 2019). In the powerfully written, *Unearthing Justice: How to Protect Your Community from the Mining Industry*, the reality of what mining looks like, what it costs, how mining profits from loss, the justice, or lack thereof, between partners, and how to organize against harmful mining practices are outlined (Cutfeet, 2019). We encourage readers to explore this captivating publication to understand further the contemporary resource extraction industry and its impacts on Indigenous communities. For the purpose of this report, we seek to highlight the following passage:

> “Mining is the story of loss. All kinds of loss. Of lives. Of land. Of water. Of livelihoods. Of good governance. Of future possibilities.” (Cutfeet, 2019)

Diesel reduction and phasing out harmful energy sources, replacing them with clean, renewable energy is of utmost importance and it must be ensured that no people or communities are left behind in this transition. Sustainable energy projects recognize the value of renewable energy in communities, reducing environmental degradation, creating jobs in the renewable energy industry, and even saving money by engaging in preventative community care (Cutfeet, 2019). Renewable energy exists in many forms. For example, hydroelectric, wind, solar, and bioenergy are at the forefront of clean energy technology (Henderson, *et al.,* 2013*)*.

Indigenous Clean Energy (ICE) has become a leading organization, mobilizing, uplifting, and researching emerging green energy strategies. ICE has shown that investing in renewable energy, especially when Indigenous-led, creates several compounding positive impacts (Henderson, *et al.,* 2013*)*. These include:

- Meeting the environmental interests of Canadians by taking preventative action on climate change
- Bring sustainable development to communities, increasing community capacity for self-determination and cultural resurgence
- Creating space for Indigenous people to include their traditions into land use management practices
- Promoting Indigenous business development
- Yielding positive economic outcomes for all Canadians, creating jobs and employment opportunities
- Bring forwards committed leaders to establish strong governance systems
- Forging partnerships and building relationships between proponents, governments, and communities
- Promote equitable business practices

There is no one type of renewable energy, projects and jobs can be related to technological innovation and design, product manufacturing, project development, science and engineering, technical specialists, communication stakeholders, construction and trades, or operations and maintenance, and supporting a variety of people, from all different levels of experience, education, and interest (Henderson, *et al.,* 2013*)*. The technology needed to invest in clean energy is no longer the limiting factor to renewable energy development. We have the possibility to pursue widespread renewable energy investment. Communities across Turtle Island have been creating ground-breaking solutions and innovations for the last two decades, the time is now to invest in implementing these solutions in a widespread way. To exemplify a few leaders in technological innovation:

- Ramea Island in NewfoundLand has created a prototype wind-energy system which produces hydrogen, helping communities become less reliant on diesel
- In Hartley Bay, the Nuxalk First Nation off-grid community commissioned a renewable microgrid hydrogen-storage system
- 13 First Nations in Northern Ontario formed the Central Corridor Energy Group, using a soft-technology approach to access previously undeveloped sources of renewable energy (Henderson, *et al.,* 2013*)*.

So then, why aren't more Indigenous-led clean energy projects happening? In *Aboriginal Power: Canada's Energy and the Future of Canada's First Peoples*, insufficient community capacity is posited as the reason for the lack of Indigenous-led clean energy projects

(Henderson, *et al.,* 2013*)*. Communities require support to build capacities, and most communities have pertinent knowledge to share yet lack the financial, educational, or commercial experience to lead these projects (Henderson, *et al.,* 2013*)*. Rather than taking over and leading projects on behalf of the communities, we must invest in community capacity building to adequately respond to the rights outlined in UNDRIP and to allow communities to practice self-determination and self-governance. It is necessary that the capacity of communities be strengthened to and become strong Environmental Guardians (Canada, 2022), knowledge keepers, and industry leaders. This requires a commitment to investing and supporting communities.

Communities must be included in all phases of information collection and dissemination, and it is imperative to connect them with all available information at every step of the way (Henderson, *et al.,* 2013*)*. To build community level capacity, communities require project-integrated, hands-on training and support, helping them to manage the development challenges of existing projects to maximize potential successes (Henderson, *et al.,* 2013*)*. Providing financial and technical support from expert advisors who provide ongoing, consistent support, without taking over community roles, is essential to building independent systems (Henderson, *et al.,* 2013*)*. These represent only a few of the strategies presented by Executive Director of Indigenous Clean Energy, Chris Henderson in *Aboriginal Power* (Henderson, *et al.,* 2013*)*. Within this informative and revolutionary publication, several case studies are explored, developing recommendations, strategies, and best practices for the clean energy revolution. ICE remains an industry leader, their reports *Waves of Change (2022), Energy Foundations (2021),* and *We Rise Together (2018)* are fundamental in outlining the current opportunity to invest in Indigenous-led clean energy development.

In 2019, it was reported that “only 14% of provincial and territorial renewable energy policy and programming impacting Indigenous peoples in Canada make any reference whatsoever to Indigenous rights” (A SHARED Future Research Team, 2019). This statistic displays the often tokenistic, or entirely absent, inclusion of Indigenous peoples in projects and the serious lack of widespread inclusion and meaningful engagement taking place. Simply mentioning principles like UNDRIP, OCAP, or FPIC are insufficient to develop projects that respect and uphold Indigenous rights. The principles established in these statements and declarations must be translated to all aspects of policy, allowing Indigenous people to lead the path forwards (A SHARED Future Research Team, 2019).

Ultimately, the simple fact is that renewable energy aids environmental conservation efforts, creates lasting economic growth, and will have benefits not just in the present, but extend to the generations to come. To satisfy the articles within UNDRIP, it is essential that the government takes action to support communities in sustainable energy development, supporting

them to become independent, self-governed, autonomous nations. Transitioning to a low carbon economy cannot be done without Indigenous inclusion, the decolonization of Canadian laws and policies is the only path towards a sustainable, equitable future.

39. **Recommendation:** Through financial and other means, promote and support Indigenous-led businesses related to green technical careers and skilled trade development.
Upholds UNDRIP Article 14, 21, 23, 39

Discussion

During our early engagement sessions, it was apparent that many community members were not aware of UNDRIP. Some had knowledge of its existence but did not understand the contents of the document. The complexity of the language and terminology made it difficult for some to review the document. This lack of familiarity made it challenging to understand the potential implications and impacts on their rights. We decided to turn our focus towards smaller focus groups and educational engagement sessions with community members. This allowed us to take the time to properly inform participants of the UNDRIP, the historical context of the development of UNDRIP, and the upcoming action plan Canada will implement. Many participants were critical of the document. They expressed doubts about the commitment to implementing UNDRIP and how legislative pathways will be enforced. Many perceived UNDRIP as a mechanism to further the assimilation of Indigenous peoples, and continuing the dispossession of lands and resources.

The participants in the beginning of engagements expressed concern about presenting the information as being focused on the positive implications of UNDRIP, rather than the reality of the concerns and distrust that we heard. We took an unbiased approach to present the information. The information and questions caused many people to feel triggered by past experiences and day-to-day struggles. With that in mind, we tried to approach people in a way that acknowledged their previous trauma and allowed them to lead their contribution, rather than be forced to relive or re-tell experiences of trauma. Participants were able to share what they felt was appropriate when given general concepts, discussion topics, or prompts. We wish to uplift the use of trauma-informed and rights-based approaches to create safe spaces. We were mindful of intersectional needs and targeted specific sub-groups of people to ensure we acquired diverse perspectives and walks of life in our engagements.

There were specific categories that were brought up during our engagements we were unable to address within this research due to scoping and time constraints, but bring forward regardless. Concerns were also expressed that Indigenous organizations over communities

have become the representation of the government to engage with community members. We heard that Indigenous people should be exempt from official language requirements for government positions, which corresponds to articles 5-6 and 32 of UNDRIP. There were calls to address residual discrimination under the *Indian Act*, in particular:

- Title and property ownership rights;
- Inheritance rights;
- Infrastructure modernization; and
- Status eligibility of s. 6.2 *Indian Act* status Indians, and related gender discrimination contained within the *Indian Act*.

There are also recommendations that were also brought forward in this document that would assist in the mitigation of barriers to the self-determination of First Nations peoples. For example, the federal government could promote leadership selection processes that better reflect the leadership and governance structures of each First Nation community without prescribing the requirements for these leadership selection processes. As noted previously in this report, Canada forced *Indian Act* electoral systems on First Nations peoples in an attempt to assimilate them. Without critically examining historical and systemic problems caused by Canada's colonial legacy in a broader sense, UNDRIP implementation may not fully succeed in redressing past harms.

Conclusion

Land is nationhood. It is the health and well-being of First Nations peoples. There remains a significant gap in UNDRIP implementation in Canada since the UNDRIP Act only applies at a federal level. Unless significant collaboration to align First Nations recommendations between federal and provincial (and by extension, municipal) governments, we may never see UNDRIP implementation that facilitates First Nations self-determination outside of the federal sphere.

The exploitation of First Nations lands and resources is escalating as the province of Ontario announces a new Critical Minerals Strategy to unlock the economic potential of Northern Ontario. Controversial mineral developments, such as the Ring of Fire, are largely unwanted by First Nations communities across the north. This is clearly demonstrated in the lawsuit filed by Attawapiskat First Nation, Apitipi Anichinapek Nation, Aroland First Nation, Constance Lake First Nation, Eabametoong First Nation, Fort Albany First Nation, Ginoogaming First Nation, Kashechewan First Nation, Kitchenuhmaykoosib Inninuwug First Nation and Neskantaga First Nation against the Province Ontario and Federal Government in an effort to create co-jurisdiction over resource development planning (McIntosh, E. 2023). Until First Nations are able to exercise any level of control over development in their territories, the clashes between First Nations responsibilities to the natural world and colonial extractivism will continue. There is scientific evidence that our natural systems are in decline, and marginalized groups such as

Indigenous people in Canada are at the forefront of defending natural systems to all of our collective benefit.

The Canadian government needs to implement innovative and courageous policies that make space for Indigenous autonomy and decision making power over lands and resources. We all have a responsibility to stand up for the natural world we benefit from, and include First Nations priorities and perspective in resource planning and development. The recommendations contained in this report are only brushing the surface of a larger system that must undergo a paradigm shift to meet our rapidly changing landscape. There still remains opportunity to collaboratively meet the priorities of diverse stakeholders while protecting our collectively shared futures. While the effects of resource developments will impact First Nations acutely and directly first, we all share the benefits and consequences of developments eventually. We submit these recommendations that flow directly from the engagements we undertook with First Nations across Northern Ontario. We are grateful for the many contributions we gathered and have strove to bring them forward in a good way. We have highlighted the barriers of UNDRIP implementation, and outlined priority areas of First Nations peoples across Northern Ontario.

Notes

1. For an analysis of impacts of development on Treaty rights, see: *Yahey v. British Columbia*, 2021 BCSC 1287.; The term “death by a thousand cuts” was used at para 1780.
2. Federal Minister of Justice Hon. David Lametti stated that the UNDRIP Act “would impose obligations on the federal government to align our laws with the declaration over time and to take actions within our areas of responsibility to implement the declaration, in consultation and co-operation with indigenous peoples. It would not impose obligations on other levels of government.” (Lametti, 2021)
3. *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44 at 102. [*Tsilhqot’in*]
4. *Ibid*.
5. *Ibid*.
6. The ability for a province to regulate holders of aboriginal title are subject to certain constitutional limitations where “[p]rovincial power to regulate land held under Aboriginal title is constitutionally limited in two ways. First, it is limited by s. 35 of the *Constitution Act, 1982*. Section 35 requires any abridgment of the rights flowing from Aboriginal title to be backed by a compelling and substantial governmental objective and to be consistent with the Crown’s fiduciary relationship with title holders. Second, a province’s power to regulate lands under Aboriginal title may in some situations also be limited by the federal power over ‘Indians, and Lands reserved for the Indians’ under s. 91(24) of the *Constitution Act, 1867*.”: *Tsilhqot’in* at para 103.
7. “The judges in the court below noted that separating federal jurisdiction over Indians from jurisdiction over their lands would have a most unfortunate result -- the government vested with primary constitutional responsibility for securing the welfare of Canada’s aboriginal peoples would find itself unable to safeguard one of the most central of native interests — their interest in their lands… As I explained earlier, *Adams* clearly establishes that aboriginal rights may be tied to land but nevertheless fall short of title. Those decision-making with the land, however, may be equally fundamental to aboriginal peoples and, for the same reason that jurisdiction over aboriginal title must vest with the federal government, so too must the power to legislate in relation to other aboriginal rights in relation to land.”: *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 at para 176. [*Delgamuukw*]
8. *Delgamuukw*, *supra* note 7 at paras 173-183; for Aboriginal Title, see: *Tsilhqot’in*, *supra* note 3 para 103; for a discussion on how provincial laws and federal laws apply to Indigenous peoples, see (Wilkins, 2021) and (Sara Fryer & Leblanc-Laurendeau, 2019).
9. Sections 92(5) and 109 of the *Constitution Act, 1867* also deal with lands and resources in provinces. For the application of these in Ontario, see: *Grassy Narrows First Nation v. Ontario (Natural Resources)*, 2014 SCC 48 at para 31.

10. The Indian Band Election Regulations, C.R.C., c. 952 also supplement the *Indian Act* election provisions.
11. *Bertrand v. Acho Dene Koe First Nation*, 2021 FC 287 at paras 36-42. [*Bertrand*]; This is also considered the “default” election process until it is determined by the Minister responsible for *Indian Act* that the *Indian Act* election provisions apply, see (Senate of Canada, 2010).
12. *Pastion v. Dene Tha’ First Nation*, 2018 FC 648 at para 9. [*Pastion*]
13. *Ibid*.
14. The definition of “council of the band” states at subsection (d) that “in the case of any other band, the council chosen according to the custom of the band, or, if there is no council, the chief of the band chosen according to the custom of the band”. See the full definition of “council of the band” under s. 2 of the *Indian Act* for context.
15. *Bertrand*, *supra* note 11 at para 36 citing *Bone v. Sioux Valley Indian Band No. 290 Council*, [1996] 3 C.N.L.R. 54 (F.C.T.D.) at para 31.
16. *Gamblin v. Norway House Cree Nation Band Council*, 2012 FC 1536 at para 34.
17. *Labelle v. Chiniki First Nation*, 2022 FC 456 at paras 8-9; see also (Senate of Canada, 2010).
18. *Pastion, supra* note 12 at para 11.
19. For more information on the more recent effects of *Indian Act* elections, see (Senate of Canada, 2010)
20. The Assembly of First Nations released a legal analysis of the differences of “veto” versus “consent”, likely to help buttress AFN’s position against Conservative opposition to a “veto” power: see (Joffe, 2015); “The Harper government has claimed, in its argument against supporting Saganash’s bill, that the declaration gives First Nations veto power over legislation and development impacting its rights and territories.”: (APTN National News, 2015); “Sen. Murray Sinclair, who also testified before the committee Tuesday, said the focus on whether consent was the same as a veto was completely wrongheaded.”: (Barrera, 2019); “Conservative MPs voted against the bill, arguing it would give Indigenous people a "veto" over natural resource projects.”: (The Canadian Press, 2021); "Free, prior and informed consent does not constitute veto power over a government's decision-making process": (Lametti, 2021); “FPIC is about working together in partnership and respect. In many ways, it reflects the ideals behind the relationship with Indigenous peoples, by striving to achieve consensus as parties work together in good faith on decisions that impact Indigenous rights and interests. Despite what some have suggested, it is not about having a veto over government decision-making.”: (Government of Canada, 2021a)
21. James Anaya, *Report to the Human Rights Council* (15 July 2009), A/HRC/12/34, at para 46. [Anaya Report]

22. United Nations General Assembly, *Free, prior and informed consent: a human rights-based approach: Study of the Expert Mechanism on the Rights of Indigenous Peoples* (10 August 2018), A/HRC/39/62 at para 16.; In the Anaya Report, *supra* note 21 at para 49, the mutual relationship of consultation was further elaborated on, where:

    > " …the duty of States to consult with indigenous peoples and related principles have emerged to reverse historical patterns of imposed decisions and conditions of life that have threatened the survival of indigenous peoples. At the same time, principles of consultation and consent do not bestow on indigenous peoples a right to unilaterally impose their will on States when the latter act legitimately and faithfully in the public interest. Rather, the principles of consultation and consent are aimed at avoiding the imposition of the will of one party over the other, and at instead striving for mutual understanding and consensual decision-making."

23. *Ibid* at para 26(a).
24. *Ibid* at para 28.
25. The "Duty to Consult" was first articulated in *R. v. Sparrow* [1990] 1 SCR 1075, and was reaffirmed in *Delgamuukw*, *supra* note 7. Since then, the range and scope of the duty to consult has significantly expanded in subsequent case law.
26. Anaya Report, *supra* note 21 at para 46.
27. The Government of Canada also highlights in their *"*Principles respecting the Government of Canada's relationship with Indigenous peoples*"* that Principle 6, in reference to FPIC, "acknowledges the Government of Canada's commitment to new nation-to-nation, government-to-government, and Inuit-Crown relationships that builds on and goes beyond the legal duty to consult.": (Government of Canada, 2021b)
28. See s. 5 of the Framework Agreement for the creation of a land code, and see s. 7 of the Framework Agreement for approval of the land code.
29. See definition of "First Nation Land" at 1.1 of the Framework Agreement.
30. For a more detailed discussion of the application of UNDRIP retroactively to land dispossession, see (Wilkins, 2021).

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